



POLICE DEPARTMENT

April 20, 2009

MEMORANDUM FOR: Police Commissioner

Re: Detective Mark Buskey
Tax Registry No. 895251
Quartermaster Section
Disciplinary Case No. 82572/07

The above-named member of the Department appeared before me on June 18 and July 7, 2008, October 22, 2008 and November 18, 2008¹ charged with the following:

1. Said Detective Mark Buskey, assigned to the 70 Detective Squad, while off-duty, on or about or between August 1, 2005 and August 31, 2005, at a location known to this Department, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective was involved in a physical altercation with another person, known to this Department. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Detective Mark Buskey, assigned to the 70 Detective Squad, while off-duty, on or about or between August 1, 2005 and August 31, 2005, having been involved in an off-duty police incident at a location known to this Department, in [REDACTED] County, did thereafter neglect to report said incident, as required. (*As amended*)

P.G. 212-32, Page 1, Paragraphs 1 & 2 – OFF DUTY INCIDENTS

3. Said Detective Mark Buskey, assigned to the 70 Detective Squad, while off-duty, on or about April 7, 2006, at a location known to this Department, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of

¹ The trial was reopened on October 22, 2008 because the Department's Exhibit consisting of a tape recording and transcript of an interview of the complainant (DX 2 and 2A) had to be re-transcribed because the Court found the corrections in the original transcript of the tape previously submitted too confusing for the Court to evaluate. The tape and the transcript were returned to the Department. In addition, Department's Exhibit 9 and 9A, also a tape and transcript of the complainant, was returned to the Department because the tape played back at a very fast speed and could not be understood. On November 18, 2008, the aforementioned evidence was resubmitted to the Court and the Court reserved its decision as of this date.

the Department, in that said Detective was involved in a verbal dispute with another person, known to this Department. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

4. Said Detective Mark Buskey, assigned to the 70 Detective Squad, while off-duty, on or about April 7, 2006, having been involved in an off-duty police incident at a location known to this Department, in [REDACTED] County, did thereafter neglect to report said incident, as required. (*As amended*)

P.G. 212-32, Page 1, Paragraphs 1 & 2 – OFF DUTY INCIDENTS

5. Said Detective Mark Buskey, assigned to the 70 Detective Squad, while off-duty, on or about December 2, 2006, at a location known to this Department, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective was involved in a physical altercation with another person, known to this Department. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

6. Said Detective Mark Buskey, assigned to the 70 Detective Squad, while off-duty, on or about April 7, 2006, at a location known to this Department, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did fail to cooperate with a 911 operator, in that while said Detective was speaking to a 911 operator, and said operator did hear a person known to the Department stating that said Detective had, “beat her up,” and where said operator asked to speak to said person known to the Department, said Detective did falsely state, “That’s a TV, don’t worry about it,” and further where said operator had asked to speak to the complaint², said Detective answered “no.” (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

7. Said Detective Mark Buskey, assigned to the Queens County District Attorney’s Office, while off-duty, on or about July 29, 2007, at a location known to this Department, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective was involved in a verbal dispute and/or physical altercation with another person, known to this Department, in that said verbal dispute did result in said Detective pushing said person known to the Department. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

8. Said Detective Mark Buskey, assigned to the Queens County District Attorney’s Office, while off-duty, on or about July 29, 2007, at a location known to this Department, in [REDACTED] County, did engage in conduct prejudicial to the good order,

² So in original.

efficiency or discipline of the Department, in that said Detective did threaten to strike a person known to the Department with a dumbbell. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

9. Said Detective Mark Buskey, assigned to the Queens County District Attorney's Office, while off-duty, on or about July 29, 2007, at a location known to this Department, in [REDACTED] County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did attempt to convince a person known to the Department to change and/or minimize allegations against said Detective regarding an ongoing Department investigation. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification Nos. 2, 4 and 6 and Not Guilty of Specification Nos. 1, 3, 5, 7, 8 and 9.

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SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Neithra Vincent, Detective Gina Sarubbi, and Police Officer Stephen Muhlenbruck as witnesses.

The Department offered into evidence a recording of a 911 call made by [REDACTED] [REDACTED] on December 2, 2006, and the associated transcription of the call under Department's Exhibits ("DX") 1 and 1A. The Department also offered a December 2, 2006 interview of [REDACTED] and the recording and transcription of the interview were admitted into evidence as DX 2 and 2A. Further entered into evidence were eight assorted photographs of [REDACTED], under DX 3A-H. A surveillance video contained on a DVD disc of [REDACTED]'s residence, recorded on December 2, 2006, was admitted into evidence as DX 4; a copy of a complaint withdrawal form was admitted into evidence under DX 5; and a compact disc and transcript containing a 911 call from the Respondent to the [REDACTED] County Police on April 7, 2006 were admitted under DX 6 and 6A. In addition, the following evidence were also admitted into evidence under the

following: a portion of an Official Department Interview of the Respondent, DX 7; a 911 call recorded on a DVD disc and transcript from [REDACTED] to the [REDACTED] County Police, DX 8 and 8A; a tape and transcription of an interview of [REDACTED], DX 9 and 9A; and telephone records and relevant certifications, DX 10A-C.

Introduction

The Assistant Department Advocate informed this Court that the Complainant, [REDACTED], was not available to testify at this trial because she "had decided to abstain herself from these proceedings. She feels her life has moved on, she no longer wants to be involved." Due to her self-imposed absence, the Department presented hearsay evidence in the form of [REDACTED]'s 911 calls, her recorded interviews, and documents containing her written statements.

[REDACTED] s 911 call on December 2, 2006

On December 2, 2006, [REDACTED] made a 911 call. (DX 1) The content of the call is as follows.

OPERATOR:	Police Operator #2104 where's the emergency?
MS. [REDACTED]	[REDACTED]
OPERATOR:	Ma'am I can't hear you where?
MS. J [REDACTED]	It's [REDACTED] he...
OPERATOR:	[REDACTED]
MS. [REDACTED]	Yes.
OPERATOR:	On what street Ma'am?
MS. [REDACTED]	[REDACTED]
OPERATOR:	You're between [REDACTED] Avenue?
MS. [REDACTED]	Yes.
OPERATOR:	What is the emergency? Talk to Ma'am what is the emergency?

MS. [REDACTED] I have a cop here, who is supposed to be my friend and he, he this is not the first time it's the third time he have beating me up when I try to call he break up my phone.

OPERATOR: What is he to you?

MS. [REDACTED] He's he's supposed to be my boyfriend.

OPERATOR: Okay.

MS. [REDACTED] He's no...He said he and you know what he want to say I'm drunk right I'm (inaudible).

OPERATOR: What apartment are you in Ma'am?

MS. [REDACTED] Apartment 2C.

OPERATOR: Apartment 2C are you on the second floor?

MS. [REDACTED] Yes.

OPERATOR: Can I get the phone number you're calling from?

MS. [REDACTED] It's [REDACTED]

OPERATOR: [REDACTED] Is he in the apartment now ma'am?

MS. [REDACTED] Yes he's walking out right now.

OPERATOR: What is he wearing?

MS. [REDACTED] Black he's all in black. He's a detective at the 70 Precinct.

OPERATOR: At the 7-0 Precinct?

MS. [REDACTED] Yeah.

OPERATOR: What's his name?

MS. [REDACTED] Mark Buskey.

OPERATOR: Mark?

MS. [REDACTED] Yes.

OPERATOR: Buskey?

MS. [REDACTED] Yes.

OPERATOR: Is he black, white or Hispanic?

MS. [REDACTED] He's black.

OPERATOR: And he just left the location right now?

MS. [REDACTED] Yes.

OPERATOR: All right ma'am the call is in the system assistance will be there as soon as possible.

MS. [REDACTED] Please I'm bleeding on my foot.

OPERATOR: Do you need the ambulance?

MS. [REDACTED] No, it's just a little, it's just (inaudible). He, threw me down two times outside.

OPERATOR: He threw you where Ma'am?

MS. [REDACTED] On the outside he pushed me down two times.

OPERATOR: All right. Ma'am you're at [REDACTED] between [REDACTED], in apartment 2C

MS. J [REDACTED]: on the second floor.
(inaudible).

OPERATOR: The call is in the system. Assistance will be there as soon as possible.
MS [REDACTED] Thank you. (DX 1)

Sergeant Neithra Vincent

Vincent is a 15 year member of the Department currently assigned to the Queens South Investigations Unit as an investigating supervisor. She has held this assignment for four years and her duties include investigating allegations of misconduct against uniformed members of the service and civilians.

On December 2, 2006, Vincent assisted in an investigation of the Respondent. She did not review any documents or physical evidence before commencing the investigation, nor did she know anything about the case other than what she had been told by Captain Eriksen, who was the Duty Captain.

Vincent interviewed [REDACTED] on December 2, 2006 at approximately 0730 hours. (DX 2) The interview lasted approximately 15 minutes.³ Vincent testified that she asked [REDACTED] about an incident that took place at [REDACTED] in the morning of December 2, 2006.

During the course of the interview, Vincent observed [REDACTED] She testified that [REDACTED] spoke coherently during the interview and did not stumble or require assistance while walking in and out of the interview room. Vincent stated that [REDACTED] claimed that she had a few drinks the evening before at approximately 7:00 p.m. Vincent stated that

³ Vincent testified that she reviewed the tape and transcript subsequent to the interview and corrected errors that she discovered in the transcript. It should be noted that as previously mentioned in footnote No.1, DX 2 was returned to the Department so that a new transcript could be made of the interview because the corrections to the one initially offered into evidence was too confusing for the Court to decipher and interpret for this opinion.

there was "a faint smell of alcohol" on [REDACTED] s breath, but Vincent concluded that "she did not appear to be intoxicated."

[REDACTED] also provided Vincent with eight photographs of herself that showed bruises that she claimed to have received during an August 2005 physical altercation with the Respondent (DX 3A through 3H).⁴ [REDACTED] did not specify how she received the injuries reflected in the photographs, but she did tell Vincent that she was the individual featured in the photographs. The photographs do not depict any injuries that she allegedly received on December 2, 2006. Vincent stated that she "did nothing else" to further the investigation after her interview with [REDACTED] and that conducting the interview completed her involvement in the investigation.

On cross-examination, Vincent testified that as part of her prior patrol duties she "had come across people who had been intoxicated..." Vincent acknowledged that [REDACTED] actually told her that she had two drinks at 7:00 p.m. the evening before the interview and reiterated that she could still smell alcohol on [REDACTED] s breath at 7:30 a.m. the next morning.⁵

Vincent testified that she did not interview the responding officers, nor did she review any police reports that they prepared prior to offering testimony. She did not know if [REDACTED] appeared intoxicated to the officers that responded to the scene and she did not know when or where the photographs provided by [REDACTED] were taken. [REDACTED] did not tell her who took the photographs.

⁴ The photographs, which are not dated, depict six photos of a female's face with what appears to be bruising around her cheek, lips and jaw areas. Two additional photos also depict an arm with bruising in the area of the wrist and forearm.

⁵ Vincent subsequently reviewed the transcript of the interview and corrected her previous statement where she testified that [REDACTED] said that she had few drinks.

Vincent had no knowledge of any independent witnesses to the incident on December 2, 2006 nor did she uncover any other objective evidence. She acknowledged that [REDACTED] told her that she had been involved in a three year relationship with the Respondent as of August 2006 and that [REDACTED] had never previously made a police report about any of the other incidents.

Interview of [REDACTED]⁶

[REDACTED] was interviewed by Vincent on December 2, 2006 regarding her allegations against the Respondent that she made in her December 2, 2006 911 call. [REDACTED] stated that she resides at [REDACTED] and was born on [REDACTED]. [REDACTED] She acknowledged that she was involved in a domestic incident with the Respondent at about 5:00 am on December 2, 2006. She explained that the two had been arguing since the prior evening about the Respondent having relationships with other “girlfriends besides [her].” She said that she telephoned the Respondent and he said that he could not talk and would call her back. When he called back, the Respondent asked her “so what is it you’re upset about” and then told her “You know it’s a month now I’ve been trying to be good and oh you stupid bitch I...don’t know what it is you want from me.”

[REDACTED] was not sure what time this telephone conversation took place, but said that it happened at night. She said that the Respondent told her on the telephone that he was coming over to her home and further stated “well you’re going to tell me why you’re being such a bitch.” [REDACTED] said that she then went outside her building and sat down

⁶ This interview represents the first interview of [REDACTED]

on the stairs because her [REDACTED] was inside sleeping and she did not want him to hear an argument.

[REDACTED] stated that as she sat outside on the steps, she continued to call him and have a series of telephone conversations with the Respondent "and every time I call him he would curse and hang up the phone." She said that she asked him what was taking so long for him to arrive, and he replied, "Oh you stupid bitch...I'll be there when I'll be there." [REDACTED] was unsure of how many times she telephoned the Respondent but said that it was "A lot of times." At one point she said that the Respondent told her "Oh you stupid bitch, I'm going to be there, and I'll be there when I'll be there."

She said that the Respondent asked her where she was and she replied that she was "inside," despite the fact that she was actually sitting outside. He informed her that she was a "lying bitch" and remarked, "you're always lying to me." [REDACTED] explained that the Respondent told her that he was outside of her building for twenty minutes and had observed her sitting on the steps. When she stood up to look for the Respondent, she saw him parked up the street and proceeded to walk towards his car when he drove off.

[REDACTED] then said, "So I was going up the stairs and then he parked at the corner, and he said 'come.' And when I went there...and I was walking up to him, he grabbed me like this. And he said 'what is your problem.'" This contact took place at "the corner of [REDACTED] and [REDACTED]"

She explained that the Respondent:

...grabbed me on my throat my throat and he was, he held onto like this and I say anything (sic). He pushed me down on the floor, right on the ground. And I went back and then I got up, and that's when I tried to call 911 and he broke my phone. So I was walking back to go back to my apartment and he grabbed me again, and he said "oh have you been drinking this evening, oh you're drunk let

me take you inside." So he, picked me up and put me on his shoulder and I'm like "leave me," you know I'm pushing him to get me off. But first when he grabbed me on my throat I did this, I grabbed at him and I scratch him on his face. And he have some scratches on his face.

So then he picked me up on his shoulder and was you know hitting him and telling him to leave me he put me down. And then he threw me back down on the sidewalk and I went down...and I was like and that's when I cut my [left] foot. And then I got up and I was walking towards my building and I went up the stairs and I said "could you leave me alone please." [And then the Respondent apparently said], "Don't fall again I'm going to just make sure you get inside safely."

So I said "please leave me alone." And then he grabbed me again and he pushed me down on the floor. He said "I won't make a second mistake twice I won't hit you." And he was like waiting, "I won't hit you in your face" because I was putting my hand over my head. He said "I won't hit you in your face. I won't make a second mistake twice." And he keep (sic) hitting me in my head. He hit me in the back here he hit me in my arm. And I took my key to open the door because it's two doors I have to open before I get into my building. When I opened the first door to get in, he rushed me he grabbed the door and he opened it and he went in with me. So I didn't open the second door I was in the lobby waiting for him to leave, I said "could you please leave me alone." And that's when he started hitting me on my head.

She proceeded to indicate that he was hitting her with:

his hands. And he said "(inaudible)"..."you keep telling me I'm such a stupid bitch." For the past month he's been trying to be honest with me and this is (inaudible) and I said "three years we've been together there's only one month you're going to be honest with me, to be honest or faithful to me." And then he keep hitting me on my head and I started screaming out and he put his hands over my mouth so that I wouldn't scream. And then he, you know he just leave me on the floor and he was going out of the first door and when I took the key to open the second door, he rushed and rushed in the, the apartment, the building. And I walked up, I went up the stairs, and he came behind me. And then he went in and pick up my son and said "oh your mother is drunk she doesn't know what she's doing you know take her and put her in the bed to lie down." And my [redacted] was like "Mommy what happened." And he, he said that "just go and lie down, just go and lie down you know just put me to lie down." And I'm not like "No I have to call 911." And that's when I took my home phone and I called 911.

She further told the investigator: "When with the second time he pushed me on the floor he threw me from his shoulder and taxi stop in front of the building and he said 'Just go your way she's drunk just go your way I'm taking care of her she's just drunk.' When the taxi stop (sic) at the front of the building. So that's about the only person who saw what happened." [REDACTED] did not know the taxi driver nor did she get his license plate number.

When she was asked if this had ever happened in the past, she replied, "Yeah. The first time he hit me in front of my building again. And then he took me in his car and he drove me to Long Island from I don't remember exactly where in Long Island. And he said, 'you're an immigrant but if you went missing you think anybody's going to look for you.' That's when I took when he hit me on my face and I took these pictures I gave you he had twisted my arm. I took these pictures myself so they're not very clear." This is the event that happened in August 2005. She did not report the incident because she "thought things would just get better."

She further told the investigator, "And then in April of this year we had another fight again, and he pushed me, we were fighting and he pushed me down. He was grabbing at me and he pushed me down and I hit my head and I was bleeding from my nose and...On the sidewalk" [in April 2006.] She stated that she "went to the hospital, [REDACTED] Hospital. And they asked me if I wanted to make a report and I...he was right outside waiting for me and I didn't make a report, he said I was, the doctor had told me to take a CAT Scan, and he, we, when we were waiting like maybe four hours, and he said 'you know we're waiting too long, I'll take you home and take you to a private doctor which he never did. So but I went to [REDACTED] Hospital."

While she also did not make a report in April, she was making a report now, "Because when, well I had called I had called his, his work and told them of what he did. And now previously when he had he told me he said you know if you go missing or your son, you guys are immigrants so nobody's going to look for you, so you know you could say what, and nobody's going to believe you.' So I had called his where he worked a couple of times, and what I spoke to to (sic) Juan Larmar I think, Detective Larmar. And he said 'why are you calling here you're threatening me.' I said 'you know what are you going to take my report or not?' And he said I said, 'or do I have to go to the TV station.' And he said 'oh I'm so scared you're threatening me, if you come here if I go to the precinct they will arrest me, he will arrest me.' So I never went and make out a report, and then Mark come and he was you know he apologized and he was nice to me but this is the reason why I never make any reports." She further stated that she is making this report "Because he hit me tonight that's why I'm making a report." (DX 2)

Video Surveillance Of [REDACTED] New York

Recorded December 2, 2006

On December 2, 2006 a video surveillance security camera recorded [REDACTED] and the Respondent walking along the pathway leading to the entrance of [REDACTED]'s building. The video also recorded them after they entered the building and as they entered [REDACTED]'s apartment. The Respondent is then seen exiting, reentering and exiting the building.

The time frame of the video is approximately 12 minutes long starting at approximately 4:48 a.m., when they first come into view and ends at approximately 5:07

a.m., when the Respondent is last seen leaving the building.⁷ It is important to highlight the fact that the recording is grainy and the individuals' faces cannot be clearly seen.⁸ It also should be noted that their various movements are generally depicted, for example, they are seen walking and making movements with their arms and other body gestures, but the lack of clarity of the recording prevented this Court from determining with any degree of certainty what was actually occurring during their movements. For example, at one point the female is seen going to the ground but it is difficult to determine whether she was pushed or fell on her own. It also cannot be determined from the recording what, if any, conversation is taking place between the two.

It is therefore abundantly clear to this Court that the appearance of the complainant in court to give her version of what was happening during this incident would have helped clarify what was happening to her during this recording.

A brief summary of the Court's review of the recording is as follows: At 4:38 a.m. the video depicts the front view of a male and female walking from the direction of the street on a pathway going towards the building. The female is walking directly in front of the male and it appears that the male has his arms around her and is holding her from behind as they are walking in tandem along the pathway.

A subsequent frame of the recording depicts the grainy images of the rear view of the male and female walking towards the entrance door. The male is still holding the female—both arms around her—from behind and walking in tandem. At one point they approach the door to the building and he stops holding her. At that point she appears to fall to the ground. He then appears to be looking down at her. She then stands up and

⁷ The video also depicts the time the events are taking place.

⁸ It is not clear from the video who the male and female are, but this Court was informed during the trial that they are [REDACTED] and the Respondent.

they both pace back and forth by the door. It appears that the female is talking to the male but she, at that point, does not enter the building.

At approximately 4:40 a.m. they are now standing about 2 to 3 feet apart and the male appears to have turned away from the female and to his right. At 4:43 a.m. the male appears to be talking on a cell phone and is standing about 5 feet from her. The female then opens the door to the building and they enter. At one point there appears to be someone, or more than one person, moving around inside the lobby of the building, but it is not clear who they are.

The video then depicts a floor landing inside the building. There is a door that leads to the landing and that door's upper half contains a glass panel or pane and through that glass there appears to be a lot of movement between individuals, but it is difficult to see exactly what is taking place.

At 4:51 a.m. the door opens and the male and female appear. The male appears to be either assisting her through the door and into the landing. As they enter the landing the female then walks in front of the male and he follows with his hands in his pockets. They then walk behind a wall and as they do so they appear to be going up steps. The male's back is visible and it appears he may be waiting there, possibly for her to open her apartment door. The male then moves out of sight behind the wall and the wall now blocks what is happening behind it.

At approximately 5:05 a.m. the male comes out from behind the wall and exits through the door on the landing. A minute later the male is seen coming back through the door and disappears behind the wall. At approximately 5:07 a.m. the male is seen leaving the hall again.

Detective Gina Sarubbi

Sarubbi is a 16-year member of the Department currently assigned to the Chief of Detectives Investigations Unit. Her duties include investigating allegations of misconduct against detectives assigned to the Detective Bureau.

Sarubbi testified that she was assigned the investigation of the Respondent involving allegations of harassment in a domestic dispute, in November 2006. She stated that the complaining witness [REDACTED] was not cooperative. Sarubbi explained that [REDACTED] made the complaint and two days later she called said she did not want to cooperate. Sarubbi did not personally meet with [REDACTED]. her calls logging her complaint and withdrawing her complaint were made to Internal Affairs. When [REDACTED] stated that she did not want to cooperate, a complaint withdrawal form was generated. The complaint initially came in on November 4, 2006 and [REDACTED] signed the withdrawal form on November 6, 2006. (DX 5)

Sarubbi stated that the November 4, 2006 allegations made against the Respondent by [REDACTED] also cited physical incidents that had previously occurred between her and the Respondent. Her complaint also included two other members of the service who [REDACTED] felt had ignored her complaints. One of the instances complained of occurred in August 2005 and the other was in April 2006. While she never met with [REDACTED] in person, Sarubbi spoke to her on the telephone on "numerous occasions."

With regard to DX 5, the complaint withdrawal form, Sarubbi stated [REDACTED] wrote that she was sorry and did not intend to get the police involved. [REDACTED] also wrote she was angry and overreacted.

The Complaint Withdrawal Form

[The "Withdrawal of Complaint" form contains a "Statement" section that begins with a typed statement that reads: "I voluntarily withdraw the complaint made by me against the above member(s) (Mark Buskey's name appeared at the top of the form) of the New York City Police Department for the following reason(s)" and is followed by a handwritten statement presumably written by [REDACTED] that reads: "I was angry and overacted. I did not mean to get the police involve (sic). I am so sorry." Underneath her written statement there is a typed statement that reads: "No one has influenced me in making this withdrawal and I am doing so freely." It is signed by [REDACTED] and dated 11-6-06.] (DX 5)

Sarubbi testified that during her multiple conversations with [REDACTED] she had an opportunity to speak with [REDACTED] regarding her complaint withdrawal on November 6, 2006. Sarubbi testified that [REDACTED] never said the events of November 4, 2006 did not occur; rather, she told Sarubbi that she did not wish to cooperate. Sarubbi acknowledged that at no point did [REDACTED] ever say that the allegations were false.

After commencing her investigation in November 2006, Sarubbi also learned, on December 9, 2006, of a domestic incident against the Respondent that occurred on December 2, 2006. Once she learned about the December allegation, a member of Sarubbi's office was sent to [REDACTED] s building where they retrieved a surveillance video from the superintendent of the building. (DX 4) She also obtained evidence from the Department's Queens South Investigations Unit, who had responded to the December 2, 2006 complaint by [REDACTED] The evidence that Sarubbi received included a police report

a domestic incident report, and pictures of [REDACTED] depicting bruises on her face. Sarubbi incorporated all of these documents into her investigative file.

On or about November 4, 2006, Sarubbi began a series of telephone conversations with [REDACTED]. One such conversation focused on an incident that took place in August 2005. Sarubbi said [REDACTED] told her she had gotten into a verbal argument with the Respondent while she was a passenger in his car as they drove in [REDACTED] County.

[REDACTED] got out of the car to get away from the Respondent and he followed after her and pushed her to the ground. The Respondent then got on top of her, choked her and would not let her go. [REDACTED] also said that the Respondent slapped her. Sarubbi added that "I know that other things occurred [referring to physical blows], I don't remember what they were."

Sarubbi testified that she spoke to [REDACTED] about the photographs she received from the Queens South Investigations Unit. (DX 3A-H) During that discussion [REDACTED] told her that they were photographs of injuries she received from the Respondent in August 2005.

Sarubbi conducted an Official Department Interview of the Respondent about the incidents involving [REDACTED]. She stated that the interview took place on January 22, 2007, and the Respondent was asked about the photographs during the interview. (DX 7) The Respondent said that he was present when the injuries depicted in the photographs occurred and identified [REDACTED] as being the person who appeared in the photographs. He said that she sustained those injuries when she fell on ice and hit her head on the concrete. He did not say how many times [REDACTED] fell, but Sarubbi assumed he meant once.

While the Respondent informed Sarubbi that he had been present at the incident where [REDACTED] was injured, he did not report the incident to the Department. The Respondent could not specify the time frame in which this incident took place although he did agree that it occurred in August 2005. Sarubbi checked for the existence of any reports made by the Respondent regarding the August 2005 incident and testified that no such reports existed.

During one of her telephone calls with [REDACTED] [REDACTED] told Sarubbi about another domestic incident involving her and the Respondent, occurring in April 2006. She told Sarubbi that she was visiting the Respondent when they became involved in a dispute and the Respondent struck her. The Respondent proceeded to telephone 911 and reported something about needing cars moved from in front of his house. Sarubbi also learned from [REDACTED] that during the 911 call [REDACTED] could be heard in the background asking for help but the Respondent would not let her speak to the 911 operator.

Sarubbi also obtained evidence regarding the April 2006 incident. She received a SPRINT printout⁹ as well as a recording of a 911 call made on April 7, 2006. (DX 6)

The Respondent's April 7, 2006 911 Call

911 Operator: Police Emergency #824. Hello? This is [REDACTED] County 911.
MARK BUSKEY¹⁰: Yes can I have a police car respond at [REDACTED]
please?

911 Operator: [REDACTED]
MARK BUSKEY: [REDACTED]. Yes.

911 Operator: In what town?
MARK BUSKEY: It's not an emergency I just need one car.
911 Operator: Okay. What town sir?
MARK BUSKEY: It's in the parking garage (inaudible).
911 Operator: What town is it in?

⁹ Computer printout of 911 call from the Special Police Radio Inquiry Network (SPRINT) system.

¹⁰ His name is incorrectly spelled "Bustey" in the transcript.

MARK BUSKEY: Oh I'm sorry [REDACTED]

911 Operator: What's the nearest corner street to [REDACTED]?

MARK BUSKEY: It's right off [REDACTED]

911 Operator: Your name?

MARK BUSKEY: Mark Buskey.

911 Operator: (inaudible) and what is the problem?

MARK BUSKEY: Just a weekly (inaudible) in the parking lot and then he pulled (inaudible).

911 Operator: Okay. And what's the name of the apartment complex?

MARK BUSKEY: [REDACTED]

911 Operator: What is she saying in the background sir?

MARK BUSKEY: No that's a, a TV don't worry about it.

911 Operator: I don't think it a TV person can I speak to her?

MARK BUSKEY: No.

911 Operator: Okay. Well an officer will be down and I'm putting down what she's saying in the background.****

MARK BUSKEY: Thank you. That's okay (inaudible).

911 Operator: All right. (DX 6)

***** [After reviewing this tape this Court could hear a female voice say "beat me up" and "You're gonna call the cops on me."] (DX 6)

Sarubbi also spoke with the Respondent about the April 2006 incident during an Official Department Interview with him on January 22, 2007. She stated that he initially denied having a domestic incident with [REDACTED] on that date, but later in the interview he did admit to having a domestic incident.

Respondent's Official Department Interview on January 22, 2007

The following is an excerpt¹¹ (pages 11 to 24) of the Respondent's January 22, 2007 interview that the Department offered for evidence (DX 7) as relevant to Sarubbi's testimony concerning the April 2006 incident:

L.T. KENNER: In April of 2006 you and Miss [REDACTED] were again involved in a physical altercation at your residence...

¹¹ This excerpt contains the correct names of the investigators, Lt. Kenner and Sgt. Lamberty (not "Kenna" and "Lamberti" as originally transcribed). Additionally, Det. Sarubbi participated in this interview and this Court believes that her name was mistakenly transcribed as "Gerouli."

SGT. LAMBERTY: You were involved in a dispute at your residence, [REDACTED] is it [REDACTED]?

DET. BUSKEY: [REDACTED] but I was never involved in an incident at my residence with my girlfriend.

SGT. LAMBERTY: Detective, April, 2006 you were involved in some type of domestic incident at the residence at [REDACTED].

DET. BUSKEY: ...that's incorrect sir.

SGT. LAMBERTY: That's incorrect?

DET. BUSKEY: Yes sir.

[The investigator, from this point on, referred to and played the recording of the Respondent's April 2006 911 call to the [REDACTED] County Police during his further questioning of the Respondent.]

THE TAPE BEGINS HERE:

911 OPERATOR: Police emergency 824. Hello this is [REDACTED] County 911.

DET. BUSKEY: Yes. Can I have a police car respond at [REDACTED].

THE TAPE IS PAUSED HERE:

SGT. LAMBERTY: Detective, did you ever reside at [REDACTED]

DET. BUSKEY: That's correct.

SGT. LAMBERTY: Okay. Does that vaguely sound like you making that call?

DET. BUSKEY: That's correct, okay, alright.

DET. BUSKEY: That call for 911 wasn't for my girlfriend.

DET. BUSKEY: I don't remember the call.

DET. BUSKEY: What I sir, what I remember from that phone call is there's cars park in my parking lot. Me and my girlfriend were having a verbal argument...

SGT. LAMBERTY: Detective then that's a domestic, that's, that's, exactly you're telling me (inaudible).

DET. BUSKEY: I thought, I thought, (sic) I'm sorry sir, my understand (sic) when you said a domestic I'm thinking more physical...

DET. BUSKEY: Yes, we were having a verbal dispute at that time.

DET. BUSKEY: When we pull up to my location where I reside I noticed that there were cars that are illegally parked in my, my space. I must have taken out my frustration on those cars, I called 911 to get a police car over there to see what we could do about the cars being moved.

SGT. LAMBERTY: Okay. No, I want you to tell me about the dispute with Miss [REDACTED] not about the cars.

DET. BUSKEY: I don't remember what the dispute was about sir.

SGT. LAMBERTY: So you don't recall that at all?

DET. BUSKEY: No.

SGT. LAMBERTY: But you do recall calling 911.

DET. BUSKEY: Yes.

SGT. LAMBERTY: You're not denying something happened, you're just saying you don't remember it?

DET. BUSKEY: I don't remember sir.

THE TAPE CONTINUES HERE:

911 OPERATOR: And what's the problem?

FEMALE VOICE #2 (inaudible) offered to beat me up.
(inaudible).

THE TAPE IS PAUSED HERE.

SGT. LAMBERTY: And who's that in the back ground?

DET. BUSKEY: That's Miss [REDACTED]

SGT. LAMBERTY: Okay, did you hear what she said?

DET. BUSKEY: She says I'm, "you're trying to get them to come here to beat me up."

SGT. LAMBERTY: No that's not what she said.

DET. BUSKEY: I heard "beat up."

SGT. LAMBERTY: "After you beat me up you're trying to call the police."

DET. BUSKEY: No.

SGT. LAMBERTY: That's what she just said.

DET. BUSKEY: No (inaudible) hearing the same thing.

DET. BUSKEY: I don't recall her saying that, you need to ask her that. I don't recall even, I never touched her.

LT. KENNER: You gotta understand that's what's being recorded.

DET. BUSKEY: I understand that it's being recorded, but what is done is a different ballgame.

LT. KENNER: We're not talking about what was done, (inaudible) what you hear there, and you heard her say now that "you beat me up you're trying to call the police."

DET. BUSKEY: I'm sorry sir, I didn't hear that on the tape.

THE TAPE RESUMES HERE:

[REDACTED] (inaudible) after you beat me up...

911 OPERATOR: And what's the problem?

[REDACTED] (inaudible) after you beat me up.

DET. BUSKEY: (speaking as tape is played) I hear "beat me up," but I don't hear the prefix before that.

[REDACTED]: (inaudible) after you beat me up?

[REDACTED]: After you beat me up you're going to try to talk to me?

THE TAPE IS PAUSED HERE:

DET. BUSKEY: Now she said, now I heard clearly "after you beat me up you're going to call the cops on me?"

SGT. LAMBERTY: Right. Yeah, I think that would lead any reasonable person to believe that something was going on between you two at that point.

DET. BUSKEY: But nothing happened, she, I never touched anybody.

THE TAPE CONTINUES HERE:

911 OPERATOR: And what's the problem?

[REDACTED] You're going to (inaudible) after you beat me up. (inaudible).

[REDACTED] You beat me up and you're going to call the cops on me?

911 OPERATOR: What is she saying in the background sir.

DET BUSKEY: No, that's a TV don't worry about it.

THE TAPE IS PAUSED HERE:

SGT. LAMBERTY: Is that a TV?

DET. BUSKEY: No.

SGT. LAMBERTY: It's not alright. Why did you not disclose that information to the 911 operator?

DET. BUSKEY: Because I didn't, it was embarrassing. I didn't want them to know that she was intoxicated.

THE TAPE CONTINUES HERE:

911 OPERATOR: It isn't a TV sir, can I speak to her?

DET. BUSKEY: No.

THE TAPE IS PAUSED HERE:

DET. BUSKEY: But nothing physical happened there.

DET. BUSKEY: It was just verbal and when the cops got there and spoke to her apparently she after we were separated, she said that there was nothing going on anyway.

DET. BUSKEY: ...and then I said well if you don't believe, if you want to take her to the train station and take her home go ahead. She stayed with me that night.

LT. KENNER: Why didn't you allow her to speak to the 911 operator?

DET. BUSKEY: Like I said it's embarrassing. I didn't want them to think they were talking to somebody intoxicated.

SGT. LAMBERTY: I'm sorry...did you notify the Department when the police came there regarding this incident at all?

DET. BUSKEY: No I didn't think it was police matter for a traffic dispute....

SGT. LAMBERTY: You keep, every time I question you about that day you keep going about the cars. My concern is not about the cars, it's about you and Miss [REDACTED] and the incident that occurred...

DET. BUSKEY: No I did not notify the Department about a verbal argument.

LT. KENNER: And why not?

DET. BUSKEY: It was a verbal argument.

DET. BUSKEY: I, I felt that it didn't require to me notifying the Department of every verbal argument I have.

DET. BUSKEY: They said I was beating her up, I'm saying I wasn't beating her up.

DET. SARUBBI: No she says in the tape "after you beat me up you're going to call the cops on me."

DET. BUSKEY: You would have to ask her that. I don't know why she said that. I'm not in, I'm not in control of what she says when she's intox. I can't be, you would have to ask her that yourself.

DET. SARUBBI: She was intoxicated that night?

DET. BUSKEY: Yes.

SGT. LAMBERTY: We interviewed her and she said that you beat her up. She said that she didn't have any injuries but you beat her up. She actually said she went to the hospital, and that you took her to the hospital...

DET. BUSKEY: That was, not that wasn't that night.

LT. KENNER: No? What night was that?

DET. BUSKEY: ...sir, honestly I do not know the exact dates...I'm not sure if it's late 2005 or 2006, I'm really not sure. I just remember the incident like it happened yesterday.

[End of the portion of the interview under DX 7.]

Sarubbi testified that the police responded to the incident on April 7, 2006, and she obtained a copy of the paperwork. The [REDACTED] County Police indicated that the incident was a disturbance call and nothing in their report mentioned anything about illegally parked cars. They felt it involved some sort of domestic disturbance. She stated that the Respondent never reported that particular incident to the Department. She explained that he was required to do so, as members of the service must report to the Department whenever they are involved in any domestic incident whether it involves a physical or verbal altercation, especially when the police respond. The [REDACTED] County reports did not mention [REDACTED] was intoxicated.

Sarubbi's investigation revealed another incident involving the Respondent and [REDACTED] which occurred on July 29, 2007. [REDACTED] called Sarubbi at her office on July 30, 2007 and she was also provided with information about that incident from the Internal Affairs Bureau (IAB) when the Respondent reported it to them. Sarubbi explained that [REDACTED] called 911 on July 29, 2007, and the Respondent reported it to IAB on the same day while [REDACTED] was on the phone with 911. Sarubbi obtained a copy of the 911 call as well as the call made to IAB by the Respondent.

[REDACTED] s 911 Call on July 29, 2007

OPERATOR: [REDACTED] County Police.

MS. S [REDACTED]: Yeah can you send a policeman here yeah my boyfriend here he just grabbed me and throw me against the TV.

911 Operator: What is the address?

MS. [REDACTED] Yes.

911 Operator: What is the address?

MS. [REDACTED]

911 Operator: What town?

MS. [REDACTED] Huh?

911 Operator: What town?

MS. [REDACTED]

911 Operator: What is the nearest corner.

MS. S [REDACTED] (inaudible) you're hear?

911 Operator: What is the nearest corner street?

MS. [REDACTED] What is that?

911 Operator: What is the nearest corner street?

MS. [REDACTED]: It's [REDACTED]

911 Operator: Is it a house or an apartment?

MS. [REDACTED]

911 Operator: What?

MS. [REDACTED]

911 Operator: Is it a house or an apartment?

MS. [REDACTED] It's an apartment, apartment 8A.

911 Operator: Your name?

MS. S [REDACTED]

911 Operator: Does he have any weapons?

MS. [REDACTED] No, he just pick up his barbell that he had on the floor here and he tell me he'll smash my face with it.

911 Operator: Did he hit you or no?

MS. [REDACTED] Yes, he did.

911 Operator: Do you need an ambulance?

MS. [REDACTED] No.

911 Operator: We'll get somebody down there.

MS. [REDACTED] Okay. Thank you. (DX 8)

Sarubbi testified she subpoenaed the home phone records of the Respondent and

[REDACTED] as part of her investigation and received certified copies from the phone company. The records encompassed a period of time from July through August 2007.

She subpoenaed these records in order to show that there had been contact between the Respondent and [REDACTED] even though he had been advised to stay away from her and

"even though he said he didn't have contact with her..." Additionally, while the Respondent claimed he did not have contact with [REDACTED] Sarubbi testified that the phone records showed that they both called each other multiple times.

[The phone records were submitted into evidence as DX 10A. The Respondent's cell phone records were submitted into evidence as DX 10B, and [REDACTED]'s cell phone records were submitted into evidence as DX 10C.]

On cross-examination, Sarubbi stated that [REDACTED] had called IAB directly and not Sarubbi. She further stated that Queens South Investigations Unit created the complaint withdrawal form and Sarubbi had contacted [REDACTED] with regard to the incident that took place on November 4, 2006 despite the fact that [REDACTED] withdrew her complaint. Sarubbi acknowledged that her initial contact with [REDACTED] was after November 6, 2006.

Sarubbi agreed that the substance of the original complaint involved incidents that had occurred seven months and 15 months earlier. Sarubbi could not recall [REDACTED]'s reasoning for waiting that length of time before reporting the incidents. Whenever they spoke on the phone, [REDACTED]'s general demeanor was "normal, sometimes sad." [REDACTED] had called her about 10 times between August 2006 and November 2007.

Sarubbi said that [REDACTED] did not "[express] an interest in something happening to [the Respondent] that hadn't already happened." She said the purpose of her calls was "to report the things that she thought he was getting away with." Sarubbi could not say if [REDACTED] thought the Respondent was not being punished as severely as he should have

been. She said, "████████ would say to me that although he was a good man, he would mistreat her physically, assault her, demean her, mentally abuse her by saying really bad things to her. And she was tired of it. And she felt that the Department should know."

Sarubbi agreed that ██████ maintained a relationship with the Respondent over the course of this time, and that she did not call the police except for all the times previously mentioned. Sarubbi said that ██████ did not call 911 every time they fought, specifying she only called for the physical alterations. When asked if ██████ had not called 911 on most of those occasions, Sarubbi replied, "She started to after the first incident." Sarubbi said she became more consistent after November 2006, when she started calling her and 911 on a more regular basis.

She acknowledged that the Respondent was never arrested and that a new "log" (case) was added to the file each time ██████ called. Each new log had to be investigated and the case had to be extended each time she called. Sarubbi agreed that these extensions led to the Respondent remaining on modified duty longer than he would have if no complaints had come in. She did not discuss with ██████ the fact that the Respondent remained on modified duty, but agreed that ██████ knew the Respondent was on modified duty and had his shield and firearms taken away as a result of the open investigation.

Sarubbi acknowledged that the version of events given by the Respondent in his Official Department Interview differed significantly from ██████'s version. Sarubbi admitted she could not uncover any independent witnesses who could confirm one side or the other, and that the Respondent and ██████ had very different explanations of the contents of both the photos and the surveillance video. Sarubbi agreed she had

previously stated that the Respondent claimed [REDACTED] fell on some ice, but after reviewing a portion of the Respondent's official interview which was read into the record (page 26 not in evidence) it was stipulated that the word "ice" was not found in his interview.

The relevant portion of the interview that was read into the record is as follows:

DETECTIVE BUSKEY: I said you're drunk, I'm taking you home, drizzling, slight rain, whatever the case may have. Driving home, she's screaming at me you're seeing 'another' girls, you're seeing other girls. And she whacks me while I'm driving and starts kicking the steering wheel. I go like this, I pushed her feet away and her hand away. I pull over to the side. She jumped out of the car, I go after her, I tried to grab her, she slips, she hits her head on the concrete. I pick her up, she says my head hurts. I put her back in the car. After, you know, she tried to run away, I put her back in the car, I said are you okay. She said my head hurts, my head hurts, can we go to CVS to get [REDACTED]. We do that, I take her to the store. She gets aspirin, She goes my head still hurts. I say well, let's go the the hospital and get your head checked out. I take her to [REDACTED] Hospital. I wait there for her.

Sarubbi indicated she had no evidence that [REDACTED] had a problem with alcohol, although the Respondent proffered that she did. Sarubbi said she reviewed reports prepared by the responding officers to the December 2, 2006 incident and that one of the officers indicated [REDACTED] appeared to be intoxicated. She admitted she had no way of knowing if [REDACTED] was intoxicated and the Respondent indicated she was intoxicated on more than one occasion. Sarubbi asked [REDACTED] whether or not she was intoxicated during their phone conversations, and [REDACTED] always denied it. Sarubbi agreed that she had two "diametrically opposed accounts of the events that took place" and no objective evidence to determine the truth.

She also agreed that on July 29, 2007, [REDACTED] and the Respondent called 911 and IAB respectively, and said that they called at exactly the same time. On July 29, 2007 the

Respondent stated he completed a complaint report against [REDACTED] for criminal mischief. Sarubbi said that the Respondent then gave her a receipt for [REDACTED]'s complaint report to the [REDACTED] County Police, but did not receive any indication from the [REDACTED] County Police that they provided the Respondent with a copy of any complaint report. She acknowledged that when she used the receipt to contact [REDACTED] County, they provided her with a copy of [REDACTED]'s complaint report, and reiterated that the Respondent said he filed a report for criminal mischief. Sarubbi agreed that the [REDACTED] County Police was the agency that classified these reports as domestic incidents, but denied that the Respondent's 911 call on July 29, 2007 was complaining about something different, specifying that he called IAB, not 911. She explained that [REDACTED] called 911 on July 29, 2007 and that she alleged the Respondent hit her. Sarubbi acknowledged that no further police action was taken that night, and admitted she did not have any evidence that the Respondent struck [REDACTED].

Sarubbi agreed that the Respondent dialed 911 on April 7, 2006, citing a parking problem. She also agreed that the [REDACTED] County Police categorized it as a domestic incident, and that no arrests were made. Sarubbi specified that [REDACTED] would not cooperate, and stated that she did not ask the officers whether or not [REDACTED] was intoxicated, nor was anything indicated on the report that implied she was intoxicated. She did not know if [REDACTED] was intoxicated that night.

Sarubbi at first indicated that the Respondent asked [REDACTED] to lie to the investigators, and specified the Respondent wanted her to tell them she had been drinking. Sarubbi, however, could not recall if [REDACTED] had used the word "lie" or not.

Sarubbi could not "agree nor disagree" that the Respondent may have been telling her to inform the investigators she had been drinking because she was actually drunk.

On re-direct examination, Sarubbi affirmed that [REDACTED] called 911 at least twice.

Sarubbi also reiterated that [REDACTED] had called her ten times complaining about behavior by the Respondent. She was not sure if she reviewed the interview given to [REDACTED] by Vincent.

Referring to the incident in August 2005, Sarubbi affirmed that the Respondent stated he tried to grab [REDACTED] and she hit her head on the concrete. The Respondent also claimed [REDACTED] hit him. There was no report to the Department about that incident by the Respondent. Sarubbi confirmed that the Respondent was referring to the injuries found in [REDACTED]'s photographs (DX 3A-3H), and acknowledged that his story involved [REDACTED] slipping and hitting her head on the concrete.

Sarubbi agreed she had seen the photographs. She also agreed she had witnessed many crime scenes and injuries received from punches during her time with the Department and that the injuries she observed on the photographs would take multiple falls to duplicate, "maybe five, six times." Her reasoning behind this statement comes from the fact that there are multiple injuries on the photographs found on different sides of [REDACTED] s face.

Sarubbi agreed that only on one occasion, out of all the incidents discussed, did [REDACTED] appear to be intoxicated. This incident occurred on December 2, 2006. Sarubbi testified that she would always note if somebody appeared to be intoxicated on her police report. Sarubbi also testified that the Respondent told her he had a complaint report with

[REDACTED] as the perpetrator of criminal mischief and not a receipt, and that a complaint report was well understood within the Department.

According to Sarubbi, the Respondent asked [REDACTED] to come to his house on July 29, 2007 because he wanted her to change her statement. Specifically, Sarubbi confirmed that [REDACTED] told her that the Respondent asked her to indicate that she was intoxicated on December 2, 2006 and that the Respondent wanted [REDACTED] to change her position because he was on modified assignment where he did not make as much money. Sarubbi stated: "He wanted her to say that this was all her fault. She was drunk. That he didn't hit her; that this didn't happen the way it seemed on the video...He wanted her to change her statement. He wanted her to call me, call his attorney and tell him that she was drunk and none of the things that she said were true. And that the things she said happened didn't."

On re-cross examination, Sarubbi agreed that neither party had seen the surveillance video on December 2, 2006. Sarubbi admitted her testimony was her impression of what was on the video. She did not know whether or not the Respondent was asking [REDACTED] to lie or tell the truth, and stated that the [REDACTED] County Police Department did not indicate whether or not [REDACTED] was drunk on their report.

Police Officer Stephen Muhlenbruck

Muhlenbruck, an eight-year member of the Department, is presently assigned to the 103 Precinct on midnight patrol. He previously worked for the 103 Precinct Domestic Violence Prevention Unit. His duties included investigating crimes involving domestic violence and responding to homes that have requested police assistance after a

domestic violence incident. Muhlenbruck indicated that he has experience speaking with both domestic violence victims and perpetrators. He stated that he has been involved with hundreds of domestic violence investigations.

Muhlenbruck testified that he was involved in an investigation regarding the Respondent on December 2, 2006 when he received a radio run to respond to a location involving a member of the Department. Muhlenbruck had not been involved in any investigation of the Respondent prior to that night, and at the time was not aware that there was an investigation ongoing regarding the Respondent.

Muhlenbruck received the call at approximately 5:15 a.m. He stated that it took him approximately 15 minutes to arrive at the location of the call. [REDACTED] Referring to a complaint report he generated that night, Muhlenbruck said that [REDACTED] resided at the address.

When he first arrived on the scene, Muhlenbruck observed a male who identified himself as a member of the Department. Muhlenbruck indicated that this individual was the Respondent. At that time the Respondent informed Muhlenbruck that he had been involved in a dispute with his girlfriend, [REDACTED]. Muhlenbruck asked the Respondent to stand by the front door so he could enter the residence and speak with [REDACTED]

Muhlenbruck explained that they were still in their Radio Motor Patrol (RMP) when the Respondent approached the vehicle to identify himself. He did not believe the Respondent flagged them down for assistance. The Respondent informed them that he worked for a detective squad in Brooklyn and stated he had worked in IAB prior to that. He did not request medical attention for anybody at that time, nor did he indicate that [REDACTED] was intoxicated.

Upon hearing the Respondent identify himself, Muhlenbruck's partner waited with the Respondent at the front door of the apartment building while Muhlenbruck went upstairs to [REDACTED] s apartment. Their RMP was parked on the street, and Muhlenbruck and his partner walked with the Respondent toward the front door of the apartment building. Muhlenbruck said that there was some separation between the front door and the street. He asked that the Respondent not tell him anything further and allow Muhlenbruck to speak to [REDACTED] first.

When Muhlenbruck reached the front door of the apartment, he knocked and encountered either [REDACTED] or her teenage son. They invited him inside and Muhlenbruck spoke with [REDACTED]. He was alone at this time, as his partner was still in front of the building with the Respondent.

Muhlenbruck's conversation with Johnson took place just inside the apartment where the living room and kitchen meet. She informed him that "she was involved in a physical altercation with [the Respondent], that he had grabbed her by the neck, thrown her to the ground outside on the street." He could not recall if [REDACTED] was standing at that point. Muhlenbruck spoke with [REDACTED] for approximately five minutes, and spent a total of 20 minutes with her. [REDACTED] was conscious the entire time and did not stumble or fall down. He affirmed that he has had occasion to interact with intoxicated individuals both on-duty and in his personal life, and explained that some indications of an intoxicated individual are "[o]odor of alcohol beverage on their breath, blood shot, watery eyes, their stance, demeanor." Muhlenbruck stated that he did observe a moderate odor of alcohol on [REDACTED] s breath, but she did not stagger, sway, or slur her words, and

her eyes were not blood shot or watery. He drew the conclusion that [REDACTED] was not intoxicated.

Muhlenbruck reiterated that he was in the apartment for about 20 minutes. He did not detect the odor of alcohol coming from anyplace inside the apartment, nor did he see signs of struggle inside the apartment. Muhlenbruck also did not observe any empty liquor, beer, or wine bottles in the apartment, although all the lights were on and he could see clearly. Muhlenbruck stated he would have noticed if empty alcohol bottles were present because they would pose a danger to any children in the apartment.

Muhlenbruck filled out two Domestic Incident Reports (DIRs), two complaint reports, and one aided card regarding the case at 6:00 a.m. He stated that he filled out some of the paperwork in [REDACTED]'s apartment and completed more at the borough. He also stated that he filled out some paperwork before his Official Department Interview regarding the incident and some of it after.

Muhlenbruck testified that it was the duty captain, Captain Eriksen, who decided two sets of DIRs and complaint reports be prepared. While Eriksen instructed him to make the two sets of DIRs, he was not planning on filling out two sets prior to receiving these instructions because he considered [REDACTED] to be the victim and the Respondent to be the primary aggressor.

On cross-examination, Muhlenbruck agreed that Eriksen had spoken with the Respondent separately in addition to speaking with [REDACTED]. He also agreed that there was a determination that no arrests would be made in the case. Muhlenbruck admitted that a combination of his investigation coupled with Eriksen's additional investigation led

Eriksen to determine each party was potentially both the subject and victim of domestic violence.

Muhlenbruck affirmed that he created two DIRs and that to his knowledge they were filed the way all DIRs were filed. Muhlenbruck stated, however, that he could not locate the DIR with the Respondent as the complainant, despite calls to the domestic violence unit. He explained that each DIR gets an assigned number and is then catalogued, but the fact that each log is handwritten makes the task more difficult.

Muhlenbruck agreed he generated the first DIR from his interview with [REDACTED]. He did not prepare the second DIR with an interview from the Respondent because the Respondent needed an Official Department Interview. Muhlenbruck stated that the Respondent did not give him a brief summary of what happened, stating that the Respondent only told him he had an argument with his girlfriend, [REDACTED].

Muhlenbruck acknowledged that he noticed signs of a physical altercation outside [REDACTED]'s apartment, citing specifically blood on the sidewalk and scratches on the Respondent's cheek. He did not notice any ripped or torn clothing on the Respondent. When questioned about the second DIR, Muhlenbruck explained, "The second DIR stated that she had reached out with her fingernails and scratched the detective's cheek." He got the information from either a sergeant, Eriksen, or the officer who conducted the Official Department Interview. He said that he filled out the second DIR after the Respondent's Official Department Interview and the contents of that document reflect the statements the Respondent made during that interview.

Muhlenbruck further testified that the Respondent filled out a portion of the DIR by himself, which Muhlenbruck read before filling out the first page of the missing DIR.

He stated that the Respondent's written statement said, in essence, that [REDACTED] reached out with her fingernails and scratched his cheek. Muhlenbruck could not recall any other statement made by the Respondent on the DIR, although he did observe injuries to the Respondent's left cheek.

Muhlenbruck stated that he could not recall if the missing DIR also indicated that [REDACTED] tore the Respondent's clothing. He agreed that [REDACTED] stated that the Respondent had grabbed her around the neck and thrown her to the ground, and also agreed that he did not see any injuries on [REDACTED]'s neck despite looking for them. Muhlenbruck affirmed he did see an injury to [REDACTED]'s foot, and explained that Johnson indicated her foot was cut on the sidewalk during one of the many times the Respondent threw her to the ground. He denied seeing any other injuries on [REDACTED] but agreed that [REDACTED] had a broken cell phone with her that was split into two halves which she claimed was broken during the altercation with the Respondent.

Muhlenbruck could not recall if [REDACTED] or the Respondent initially dialed 911. He agreed he offered [REDACTED] medical attention, which she refused. Muhlenbruck affirmed that the cut on [REDACTED]'s foot had stopped bleeding by the time he arrived and that she was barefoot in her home. [REDACTED] indicated to Muhlenbruck that she was barefoot at the time of the altercation, and when Muhlenbruck came into [REDACTED]'s residence "[s]he was still bare foot, [wearing] pajama pants and a t-shirt." He denied that [REDACTED] explained to him how she became barefoot outside, and affirmed that he has encountered more than one instance where a complainant made false allegations in a domestic incident.

On re-direct examination, Muhlenbruck referred to a SPRINT printout and stated that a female complainant called 911 the night of the incident, although no name was given. The second page of the first DIR, with [REDACTED] listed as the complainant, was submitted into evidence as DX 11. Muhlenbruck stated that [REDACTED] generated the document with Muhlenbruck as the witness officer. He was certain that he was present when the document was generated because both his signature and [REDACTED]'s signature could be found on the bottom of the document. DX 11 includes only the second page of the DIR, and Muhlenbruck stated that he completed the first page himself, although it did not become part of the callout package. He did not know what happened to the first page, despite steps taken in an attempt to retrieve it.

In response to questioning by the Court, Muhlenbruck explained that Johnson's handwriting was on the DIR and stated that he observed her write the report and sign it.

[REDACTED] s Domestic Incident Report

[REDACTED] stated in her DIR that on December 2, 2006, she was waiting for the Respondent outside of her building. She stated that she was "sitting on the steps outside waiting for him. When he saw me he drove to the end off (sic) the street and he called me. When I approached him he told me I was drunk and grab me by the throat. I automatically snap out at him and scratch him on the face and he threw me on the ground. He then pick me up and threw me on the ground 2 times. I cut my left foot when he threw me on the ground and it was bleeding."

The report is signed by [REDACTED]. (DX 11)

On August 21, 2007, [REDACTED] was interviewed about the events on July 29, 2007. Sergeant Hunter-Clark of the Chief of Detectives Investigations Unit conducted this interview and recorded it on an audiocassette. Information from the [REDACTED] County Police Department revealed that they classified this July 2007 incident as being a domestic incident. A complaint was generated with [REDACTED] as the complainant. No criminal charges were filed and no arrests were made.

During his Official Department Interview, the Respondent submitted a receipt, saying that he had made a complaint against [REDACTED] for criminal mischief further to the July 29, 2007 incident. Upon redemption of the receipt, it was actually for a complaint made by [REDACTED] against the Respondent. No complaints made by the Respondent were located.

Summary Of [REDACTED]'s August 21 Interview

On August 21, 2007, [REDACTED] was interviewed by Sergeant Hunter-Clark regarding the incident on July 29, 2007.

[REDACTED] stated that she had called 911 on the Respondent¹² and knew that they had taken his gun and badge from him. She stated that she was still talking to the Respondent and he apologized, telling her that he was sorry. He had been transferred from the 70 Precinct and told [REDACTED]: "he wasn't making me up the money that he used to make and he asked me if I would go and say that I was drunk. And I didn't know what I was doing. And in the process of he helping me come downstairs, to come upstairs I got hurt."

¹² [REDACTED] is referring to the 911 call she made on December 2, 2006.

She indicated that on December 5, "he always asked me if I would go to Court and say I was drunk...Or if I would talk to his lawyer and say that I was drunk." She mentioned that when she went to Trinidad in March, her sister said that if something happened between her and the Respondent and "I'd say I was drunk nobody would take me seriously. So I said you know what his job is involved he's not making all the money, I would still talk to him..." She indicated that on the Friday before July 29, 2007, the Respondent had called and asked her to come over to his place so they could talk and she could tell the lawyer that she was drunk. She told him, "no problem," and he indicated that he was "not going to do the things you know to embarrass me or get physical or whatever." She further stated: "And I said you know what no problem I will do it because, you know what, I really, really, really did like this guy." When asked how long she and the Respondent were "together," [REDACTED] stated four years.

When she went over to the Respondent's place [on July 29, 2007], [REDACTED] stated that they were talking and he would go to the bedroom, "acting to [her] like suspicious about something." When [REDACTED] asked him what he was hiding in the bedroom, she stated that he replied, "Oh nothing." When she asked him if her camera was there, he indicated that he "just put it in the drawer." She noted that during the week he had called her and told her it was a good camera and he had taken pictures with it. While at his place, [REDACTED] asked if she could see the pictures. He agreed to let her look at the pictures on the digital camera and she saw some pictures of him naked, at which point she called him a "fucking liar." She said to him: "You told me that you're not involved with no woman whatever and this is what, who these pictures of you."

[REDACTED] stated that the Respondent said that his 38-year-old male cousin, [REDACTED] took the pictures and he called his cousin to speak with [REDACTED] to "prove it." She asked [REDACTED] where the pictures were taken and was told that they were taken by the door. However, she said that the pictures [REDACTED] took at the front door were not the ones where the Respondent was naked in his bedroom. The Respondent reiterated that [REDACTED] took the pictures. [REDACTED] then attempted to take the camera back because this was "not what [she] gave [him her] camera for." She told the Respondent that some woman had to have taken those pictures of him so she took the camera back. She stated that he then "swung like this and he knocked the shelf off this entertainment center. And then he said 'oh my God' he, he usually buys like figurines." She stated that the Respondent "was like 'oh my God [REDACTED] look at what you did'...but I just wanted my camera."

[REDACTED] then put the camera in her bag. As she was leaving, the Respondent took out a barbell. She stated: "He took it out and he said 'if you walk out of here it's coming behind you.' Just like he (inaudible) this is, 'if you walk out of here this is coming behind you,' and he had it in his hand like this. So I was like (inaudible) and you know what let me not walk over here, so I stand and he came he shoved me, and he walked out the door. He kind of like opened the door and kind of...pushed me in the corner and he opened door and he went out."

She stated that she was then inside and heard him talking on the phone, saying: "Oh she's here this is Detective so and so and this is, this is the number and I'm calling to let you know." She thought he was calling 911 on her so she called 911. When they arrived, the Respondent told them that he "didn't invite [her] there" and that she had come on her own. She noted that at the time, she had not seen the Respondent "in like a

couple of months" but they still talked on the telephone. She stated: "Most of the time he would call me because he wanted me to go to Court and say that I was...drunk and I didn't know what I was...doing and I was accusing him wrongfully...That's, that's what he wanted me to do."

[REDACTED] stated that the Respondent alleged that she had come there on her own, uninvited, and that she had broken things in his living room. The police officer who responded to the 911 call asked [REDACTED] if she wanted the Respondent arrested and she replied, "Yes." The police officer informed her that if the Respondent was arrested, [REDACTED] could be arrested too because the Respondent alleged that she broke things in his place. The Respondent stated that he did not want [REDACTED] arrested. At the same time, [REDACTED] the Respondent's cousin, came and offered to take [REDACTED] home, so she left. That was when [REDACTED] discovered that it was [REDACTED] that the Respondent had called.

When asked if the Respondent hit her in the face, [REDACTED] replied, "No he didn't hit me. He threatened...to hit me with the barbell." She stated that she had gotten to the Respondent's house at "maybe 9 o'clock maybe after 9...in the morning." She worked from Wednesday to Sunday morning, and she was leaving work that Sunday morning. The Respondent had asked her to "stop over and talk to him." She stated that between about 9:00 a.m. and 12:00 p.m. or 1:00 p.m., they sat and talked in the living room. The Respondent said he would take her to the movies and then drop her off at home. She stated: "And then we got to this point where he had the pictures and you know the thing is I'm not going to say he's a bad person he gets physical and violent whenever he's cheating with someone else...He has someone else in the picture...That's when he gets

physical. And he gets violent, and like if, if I happen to find out who is the person like he's cheating with someone, that's when he would get that way."

[REDACTED] agreed that she and the Respondent have had some altercation in the past. [REDACTED] She indicated that she had spoken to Lieutenant Kenner, who is now retired. When asked if the December 2006 incident was the one that Kenner handled, [REDACTED] replied: "Now that's not the only time he was physical with me...There was one time the first time he had hit me the first time he had actually he didn't hit me you know..." [REDACTED] recalled the incident that occurred in "maybe 2004." She was missing a pair of Guess sneakers at the Respondent's house and he had showed her a pair of Fila sneakers and told her that they were hers. She insisted that they were not hers. The Respondent was driving to work and dropped [REDACTED] at home and he reiterated that they were her sneakers. She stated: "I'm like 'man that's those are not my sneakers' and he was like 'yes' and you know he was getting angry with me and he grabbed me in the back of my head and he, he grabbed me like this and he pushed me against the dashboard where he was in his car where he was driving." She explained that her "kids don't really like him" nor did any of her relatives "because they say in the beginning he was too good to be true."

At the time, [REDACTED] was living at [REDACTED]. She stated: "He dropped me off there and I had dried my eyes cause I was crying in the car... I don't want my kids see my crying..." [REDACTED] then called the Respondent's aunt in [REDACTED], not far from where the Respondent lived, to tell her "what he did to me." The aunt explained that "maybe he's a little stressed out with his job." [REDACTED] agreed with her because "you know I was looking for excuses...because you know what when you

like someone you look for excuses" to justify what happened. She further stated that the Respondent came and apologized to her in the end of 2003 or the beginning of 2004.

[REDACTED] then indicated that "in the summer of that year," the Respondent met a lady named [REDACTED] at a dance class reunion he attended. [REDACTED] and the Respondent were friends before [REDACTED] had gotten married. [REDACTED] stated that the Respondent started a relationship with [REDACTED] and she learned through conversations with the Respondent's upstairs neighbor that "he would have this woman coming over in his apartment and they would spend the whole day and stuff like that." [REDACTED] 'did really find out" when she saw him dialing his voicemail PIN and she accessed his voicemail. [REDACTED] listened to the messages and stated: "she was like 'oh Mark I'm so depressed' and, you know, 'I wish I could see you now.'"

[REDACTED] further stated that sometimes she spent the night over at the Respondent's place and "he would love to mix Long Island Ice Teas for me to drink which would put me to sleep right away if I drink it. I would sleep." She claimed that when she would wake up at night, the Respondent was not there. When she woke up, he was back and he would say that he went for a jog at 1 or 2 o'clock in the morning. She stated: "So, you know I, I give him the benefit of the doubt. And then when I got into his voicemail and I was listening to these messages I forward the message that I listened to the woman's husband because I had called the house. I saw the number on his phone I had called his, her house and the husband told me I had forwarded the message to him."

[REDACTED] stated that when [REDACTED] found out about the forwarded message, [REDACTED] was "mad" and she and a friend came to the Respondent's house. [REDACTED] answered the door "and the friend said if I only knew that was the woman I would have fucked her ass

right there or something..." [REDACTED] said that the Respondent's relationship with [REDACTED] eventually broke up because "the husband found out and he had called and left messages for him and threatened him." After "that went by," [REDACTED] said that the Respondent came and was "nice again" with her. She explained: "You know I can't complain I got married when I was sixteen years I've been with my ex husband until I was thirty-eight years old." After she had broken up with her ex-husband, she "never dated so going out with [the Respondent]...was something new for [her]."

[REDACTED] stated that when the Respondent found out that she had spoken to [REDACTED] husband, he was mad. [REDACTED] was sleeping at the Respondent's apartment and he said to her: "I don't know what you doing to me, I can't trust you..." She further stated that he dragged her out of the bed and put her in the car, saying "You know what, you go, you're getting out of here." When she replied that she could not go, the Respondent said that he would give her a ride home. She stated that during that time he had told her he wanted her to have a child for him and she "really wanted" to do so. She indicated that the Respondent did not have any children. She was taking folic acid and fertility drugs that her doctor gave her.

On the night that the Respondent was driving [REDACTED] home, when he found out that she had spoken to [REDACTED] s husband [REDACTED] stated: "He say 'you ugly bitch, I could never have a child with you you're so ugly' and was telling me all these things. So I was in the car not saying anything...cause I know he was angry." She stated that he drove somewhere in Long Island; although [REDACTED] could not remember exactly where, she said that there was a train line running. She said that the Respondent got out of the car, took his gun, and told her to "get out here." She did not want to get out of the car so "he

dragged me out I had hold onto the car and he's pulling me out. In the process of his pulling me out and I didn't want to come out I broke the lever, the lever for the wiper blade, part of the wiper..."

[REDACTED] further stated: "He dragged me out and took his gun and put it by my head 'yes you bitch you're an immigrant and if you went missing nobody going to look for you cause you have no family here.' And he put the gun at my head. Right? I had, I think I gave Lieutenant Kenner the picture of it because I took a picture of myself." The interviewer, Hunter-Clark, noted that she had seen the picture. [REDACTED] said that she put on makeup to cover it up so that no one would see it, but she did take a picture. After the incident, the Respondent apologized. [REDACTED] stated: "Like I say he always you know so remorseful and you know he wanted he's sorry and he would bring flowers be nice with me again." [REDACTED] alleged that [REDACTED] said she would come and look for her and "burn [her] out."

[REDACTED] stated that she and the Respondent "got back together and it was going okay until" he "started seeing" someone named [REDACTED] in the summer of the next year.

[REDACTED] stated that the Respondent had arrested a man named [REDACTED] who was [REDACTED]'s boyfriend. According to [REDACTED] the Respondent "started making [REDACTED] ride in his car and he was sneaky he could be real charming." [REDACTED] said that in April 2005, she saw a hickey on the Respondent's neck a couple of times and makeup on his clothes. When she questioned him about the hickey, the Respondent would say that one of the guys hurt him on his neck when he was coaching football, but [REDACTED] said that would probably cause "a knot on your neck."

When [REDACTED] questioned the Respondent about the makeup on his clothes, he said that he was eating a beef patty. In response, [REDACTED] said: "So you're calling her beef patty what do you call me. You know she's beef patty who am I." On the night that she saw the makeup on the Respondent's clothes, it was raining as they were driving home. [REDACTED] made a comment about prints on his windshield: "[I]t looks like if someone put their feet up on it you could see the big toe...And he went ballistic with that, threatened to throw me out of the car again because I, I just commented on the footprint."

A few days later, the Respondent went to [REDACTED]'s house to drive her to his house. She stated that she "happened to bend down" and saw birth control pills in the front seat of the car. She indicated that she usually puts her bag in the back and she would sit there because he had a two-door car. She stated: "So, when I'm getting out now I took my bag, the birth control pills in the back seat like someone put it there especially...for me to see." When she asked the Respondent what it was, he said that he did not know. He said that he had arrested a man and the man's girlfriend was in the car so "maybe she just dropped it there."

Later that night, [REDACTED] and the Respondent got into an argument where: "he grabbed me on the floor and had me on top pushed me down on the floor and he 'you're making too much noise man I don't want my neighbors to know what is going on.' He was sitting on top of me and I'm on the floor and had his hand over my mouth and I'm like, I felt like I passed out for a couple of minutes." She stated that when she came to, she said: "You know what, I'm going home I'm walking out of here. That was the night he called the cops...and I thought he called, he said, because he told me, h[e] said 'you have to leave here' and I said 'I'm not leaving,' right. I don't know, I'm crazy."

When [REDACTED] said that she was not leaving, the Respondent said that he would [REDACTED] call the police on her, which he proceeded to do. The “[REDACTED] the [REDACTED] County cops” came to his apartment and the Respondent said that the reason he called was because there was illegal parking in the parking lot. She stated that while the Respondent was speaking to the 911 operator on the telephone, [REDACTED] aid: “You just beat me up and you’re calling the cops on me.” She stated that the 911 operator asked to speak to [REDACTED] but the Respondent would not let the operator speak to her. [REDACTED] said that “this is why they send the cops there.”

[REDACTED] hen walked out to go home and the Respondent offered to drive her. While in the car, they were on [REDACTED] and they were arguing. She stated: “[T]hat’s when he opened the car door and he pushed me out of the car.” [REDACTED] went to hide in a bush at a nearby church. She said that the Respondent drove around the area “for maybe like two hours” looking for her. When he eventually found her, he asked her what she was doing underneath there. He offered to take her home, telling her that she did not have to stay there. She stated: “He grabbed me and said ‘come on I’ll take you home’ and I’m trying to get away from him. And he said ‘okay you want to go’ and he pushed me. And I fell back and hit my head and I was, my nose, I was bleeding through my nose so I said, I felt this big thing in the back of my head and was feeling kind of woozy and I said ‘you know what, I need to go to the hospital.’ He said ‘oh I can’t take you to the hospital yet, I’ll take you to [REDACTED] Hospital.’”

The Respondent then too [REDACTED] to [REDACTED] Hospital. While she was waiting, she spoke to a nurse and the Respondent sat there “intimidating [REDACTED], looking at the nurse.” The nurse told [REDACTED] to go into the other room, where the nurse then asked

[REDACTED] f she wanted the Respondent arrested. In response, [REDACTED] said: "And I was like 'no' you know I mean you know (inaudible)...Like my sister say I'm so stupid you know."

[REDACTED] stated that as she was waiting for a CAT scan to be performed, the Respondent "said 'you know what, we have to wait here too long sign yourself out' and we will and he will take me a private doctor," so [REDACTED] signed herself out. The Respondent then took her home but she never went to the private doctor. [REDACTED] stated that this was the last incident until the one in December 2006, when the Respondent "came because [REDACTED] spoke to his [REDACTED] with all the in [REDACTED] [they] were planning for."

[REDACTED] stated that the Respondent had shown her his [REDACTED] which he said his [REDACTED] "owns." Therefore, if [REDACTED] went through [REDACTED], she and the Respondent would have to show all their transactions. [REDACTED] stated: "He have to pay her half the value of the [REDACTED] because that's what's stated in his [REDACTED] papers. That's what he brought and he showed me it. So I called her up because you know I (inaudible) her phone number was in his phone." She stated that the Respondent was mad with her for talking to his [REDACTED]. She said: "He called me up on the phone and 'what you see you do this always get into my business you have to answer to me when I get there.'"

Since [REDACTED] was inside with her [REDACTED], who was sitting in her bedroom, she did not want her kids to "hear what is going on." She went outside to wait for the Respondent on the steps since he said he was coming and "the way he sounded over the phone when he was, when he's ready to fight." On the telephone, she told the

Respondent that she was waiting for him but did not tell him that she was outside, although she "was pretending that [she] was inside." The Respondent responded, "[O]h you such a fucking liar you're outside there and you're saying you're inside" because [REDACTED] did not realize that he was parked outside already waiting there.

[REDACTED] further stated that the Respondent came, drove down the corner, and told her to come because he needed to talk to her. She stated: "[H]e came now and he grabbed me and that's when he started hitting me. And he was dragging me by my hair, pulling me up the street, and I was screaming and a taxi driver had stopped and he said 'why you fucking mind your fucking business'...And then now I tried to run away from him a couple of times and I had my phone with me, so I took out the phone to call 911. And he broke the phone." [REDACTED] said that she then ran up the stairs, but he held her "right down the stairs" and would not let her come inside. [REDACTED] agreed that this is the incident that Detective Sarubbi and Sergeant Lamberty dealt with. She stated that that was when she called 911 and the police came.

When directed back to the incident where Johnson was at the Respondent's home and he wanted her to call his lawyer, [REDACTED] said that the Respondent told her that he had already spoken to his lawyer and that his lawyer was going to call her so she could say that she was drunk. She stated that his lawyer did not call her. She agreed that that was when she called 911. She was at his place and he said he was going to hit her with the barbell. He had locked the door and was inside of his place. She stated that he had taken her cell phone and hid it, so she went in his bedroom, took the cell phone, and called 911. She told the 911 operator that the Respondent had threatened to hit her, but she did not say that he hit her.

[REDACTED] explained that when the police arrived, the Respondent went outside to meet them. She stated: "And I walk out after because when he went outside I opened the door and I went out and he was like he was talking to her and she said, 'okay you know what you have to wait because she's the one who called I need to talk to her first.'"

[REDACTED] said that the female police officer told the Respondent to calm down because he was "acting up." [REDACTED] then told the officer what happened. The officer told [REDACTED] that she should not be near the Respondent because "it seems as though [they] have a volatile relationship and [the Respondent]'s saying that [REDACTED] broke the stuff in his apartment." The officer asked [REDACTED] if she wanted the Respondent arrested and [REDACTED] said, "Yes." The officer said that she would have to arrest [REDACTED], too, because the Respondent alleged that she broke "stuff" in his apartment. [REDACTED] said that she left because the Respondent's cousin, [REDACTED] came and said he would take her to the train station, which he did. Since she had missed the train, the cousin took [REDACTED] to his house, where she spoke with his aunt. [REDACTED] stayed there and they drove her home.

[REDACTED] stated that the Respondent did not want to press charges, but a police report was filed in [REDACTED] County, since the Respondent lives in [REDACTED]. The police officer gave [REDACTED] the complaint number.

[REDACTED] indicated that she spoke with the Respondent, even though she did not see him for a couple of months after December 2006. When asked if she had a "romantic" relationship with the Respondent from the time period of December 2006 to July 2007, [REDACTED] indicated that she did, for Christmas. She stated that they had planned a trip for two years to Las Vegas, so after what happened, they went on that trip and spent time together in Las Vegas. [REDACTED] stated that on four occasions within that

time period, she also let the Respondent sleep over at her place. After they came back from their trip, he would ask her if he could sleep there when he worked late and had to get to work at 8 o'clock the next morning, or if he went to a basketball game. [REDACTED] stated that when the Respondent slept over, he would sleep in the bedroom and she would sleep on the couch.

When asked if during any of those four times or "even just another time" they "physically...started rekindling," [REDACTED] stated that she and the Respondent never had sex because she had a problem where she would [REDACTED] but her doctor was not sure what it was. She further stated: "maybe if one day might be a little [REDACTED] ...And then the next day it would be [REDACTED] so we never had sex."

However, she stated that they slept together in the same bed and agreed that there was "some form of intimacy."

The line of questioning was then directed to [REDACTED]'s recent complaints of messages being forwarded to another phone. [REDACTED] stated that she "didn't know that was still happening." She explained that the Respondent had a family reunion on August 10 and 11, 2007. She said that the Respondent called her and told her that his cousin [REDACTED] told him that someone had broken into the Respondent's apartment and had called [REDACTED]'s phone. The Respondent asked [REDACTED] to go there and then called [REDACTED] to see if she was in his apartment. [REDACTED] explained that she used to have a key to his apartment, but after the incident in December 2006 where the police were called, she had thrown the key in the garbage and down the garbage chute because the Respondent said he had changed the lock on his door.

When the Respondent told her about the break-in at his apartment, she asked him if he left "anywhere open, you know outside." She stated that his apartment is in the middle and "it has viewing in the front and in the back" so if someone were breaking into his apartment, she was sure that someone would see what was going on, especially since he said that his cousin had called at 10 o'clock in the morning. She stated that the Respondent then told her that someone stole tickets for a basketball game. She told one of her friends about the break-in and how the person called [REDACTED] and her friend said, [REDACTED] "you're so stupid, if someone broke into his apartment why would they call [REDACTED] ..He's just trying to use his psyche against you to mess you up or something..."

[REDACTED] stated that when the Respondent contacted her on August 10, 2007 she felt that he did not believe that she was not in his apartment. She said to him: "I know you, you was going to accuse me for doing that, I know in your mind you're thinking I was there." But she said that she could prove that she was not there because she had "what time [her employee] dropped her off" and she had a ticket that she paid for with a credit card on that day. She stated that when the Respondent called her, she was watching TV with her two sons.

[REDACTED] stated that after that, her sister had called her last Wednesday when [REDACTED] was out in [REDACTED], even though she usually works in [REDACTED]. Her sister said that she had been calling [REDACTED] but her voice message "keeps going to (area code) 631." [REDACTED] responded that maybe it was because she was in [REDACTED] and that was why she got the area code of 631. [REDACTED] stated: "I never really paid it any mind."

[REDACTED] further stated: "But then he was talking to me, she told me something I can't even remember what he called me for and he said 'okay call me' and he told me that 'I'm moving out from this apartment because I'm paying \$1400 for here...I can't afford it'...So, I signed the paper I signed the paper, and I sent it to him and he said they called him and tell him that I need to be in the apartment. So, I was like 'why would they call you that's you're not paying the rent...I'm paying my rent. Why would they call.' Not knowing that my phone, I never had any voicemail from since that time all was forwarding to his phone."

One Saturday, [REDACTED]'s sister called to say that a man had answered [REDACTED] phone. [REDACTED]'s [REDACTED] also called and said that a man answered the phone but did not say anything. She then told her sister to call the number back and "see what, who is the number it's going to and she told it [REDACTED] so I was like 'oh my God I didn't even know he had my messages.'" [REDACTED] also asked her girlfriend to call, which she did. Her girlfriend said that it went "to the 98 number" and she left a message, asking where they were going to hang out that night. Her girlfriend then called [REDACTED] to say that "this guy answered the phone and he said you called the wrong number there's no Ryan here, and if you call back here I'll have you arrested." [REDACTED] acknowledged that sometimes she dials the wrong number, but "no one is like that, they would say 'oh you dialed the wrong number' or something like that."

[REDACTED] then decided to use her home phone to call her cell phone and she "realized it went to this, the, the phone that's when [she] called Detective Sarubbi" but Sarubbi was "off for the weekend." [REDACTED] then called the Respondent's workplace, "where he's working doing desk duty," and spoke to Police Officer Sorskinsky. She

stated to the officer: ““You know there’s one of your workers, one of your employees there who he is has my cell phone’ and I explained what was going on.” Sorskinsky advised her to call IAB, which she did. She spoke with a Lieutenant or Police Officer Cherry, who gave her a complaint number, which she later gave to Sarubbi. Sarubbi told [REDACTED] to call her phone company, Verizon, “and find out when it was (inaudible) I pay my bill and all that.”

[REDACTED] was told by Verizon that the Respondent could have gotten her account number from an old phone bill. She indicated that the Respondent knows her social security number and her social security card has been missing “since this has been happening.” She said that she never hid anything from the Respondent so “maybe he has it.” [REDACTED] was told that if the Respondent had her social security number, he “don’t even have to talk to the technical support...he could just go and he don’t even have to talk over the phone, he could say he want to do it that way (inaudible) because I didn’t have a password to get into my account.” The person at Verizon told [REDACTED] that if “star 71 or 72” was dialed from her phone, her voicemail would go straight to his phone but she said that she did not do that because “why would I want him to receive my messages.” The person at Verizon said “that’s the only way to do it.” [REDACTED] denied that she gave the Respondent permission to have her messages forwarded to his phone.

When asked about the incident on July 29, 2007, [REDACTED] denied that she went to the Respondent’s house to try to reconcile her relationship with him. She stated: “We was there to talk about the case, what he wanted me to say to the lawyer...Because even before that he was saying that there’s no, we can’t back and we can’t work it out and whatever...I knew there was no hope in the relationship.” She denied that she “became

upset and stuff throwing things around his house." She said that the reason why they had a "scuffle" was because she wanted to get the camera so she could get prints of the naked pictures. She had told Sarubbi that she would give her those prints but she was unable to get them at Walgreens because their machine was not working.

At the conclusion of the interview [REDACTED] was told by Hunter-Clark that she could always call to have the prints picked up. When asked if there was anything that [REDACTED] wanted to say, she stated: "No. That's it." Hunter-Clark also noted that "the complainant has not heard from the subject officer since the, the incident the other day."

(DX 9)

The Respondent's Case

The Respondent called Police Officer Sean Carolan as a witness. The Respondent also testified in his own behalf.

Police Officer Sean Carolan

Carolan is currently assigned to the 103 Precinct and his duties consist of working as a patrol officer on the midnight shift. He also served in that capacity on December 2, 2006.

Carolan testified that early in the morning on that date he responded to an incident involving the Respondent and [REDACTED]. Although he did not recall very much about the incident, he did recall being questioned during an Official Department Interview later that morning. He also recalled being asked if [REDACTED] seemed like she was intoxicated and responding, "She was, she was slurring her words a little, yes." Carolan testified that he

remembered being asked about the Respondent and indicating in reply that the Respondent was "calm, cool, collected, no intox." Carolan stated that his partner that night was Muhlenbruck.

On cross-examination, Carolan explained that his partner took the lead in the investigation during the incident. He acknowledged that he primarily spoke with the Respondent while Muhlenbruck had the majority of the interaction with [REDACTED]. Carolan did not recall ever speaking with [REDACTED]. He could see [REDACTED] and during this time she did not fall down, stumble, or black out, and her eyes did not roll back in her head. Carolan affirmed he has experience with individuals who are intoxicated, encountering them both on his job and in his personal life. When asked how intoxicated [REDACTED] was, Carolan stated, "It wasn't that she was stumbling intoxicated or anything like that. I don't really recall it much. She wasn't--she looked like she had drank during the day and was basically coming down from earlier in the day."

The Respondent

The Respondent, a 19-year member of the Department, is currently assigned to the Gang Division. His duties consist of taking complaints regarding possible gang affiliations and gang arrests in the Gang Division.

The Respondent met [REDACTED] in [REDACTED] and they eventually began dating approximately five years ago. According to the Respondent, the relationship was not serious, and he stated that it did not progressively get more serious as the relationship went on. They did not live together at any point, but approximately two years into the relationship the Respondent co-signed with [REDACTED] to get an apartment on [REDACTED]

They currently have no relationship. He presently lives at [REDACTED] New York, and lived at the same address when the relationship started. When asked if the relationship was "easy going" or if it got worse, the Respondent said, "Yes, it was easy, but it went sour after that and I really didn't want to be in that relationship any longer." The Respondent attempted to break up with [REDACTED] the first time approximately two years into the relationship in 2005. This attempt to end the relationship made Johnson "upset, very upset, angry, she wanted to know why. She was blaming it on other females that I had been friends with." [REDACTED] claimed the Respondent was dating other people instead of her, but the Respondent did not actually break up with her because he "just wanted her to understand to see if [they] could work it out but [they] never worked it out."

The Respondent testified that in August 2005 the problems in the relationship got worse. He stated that one of the main things they argued about was [REDACTED]'s excessive alcohol consumption. Due to his experience with certain family members and friends who had drinking problems, the Respondent attempted to get her and her house "cleaned up." The Respondent said that [REDACTED] "absolutely" drank more than he did.

The Respondent acknowledged that in August 2005 an incident occurred involving [REDACTED] during which she needed to go to [REDACTED] Hospital. According to the Respondent, they were having an argument about [REDACTED]'s drinking on a rainy day, and [REDACTED] was intoxicated. The Respondent later indicated that she had been drinking in [REDACTED] his presence earlier while they were eating dinner and watching TV. After the Respondent told [REDACTED] he would take her home, she began screaming at him as he was driving on a street called [REDACTED] on [REDACTED] on the way to her house. She

claimed that he wanted to get rid of her in order to see other women. [REDACTED] struck the Respondent on the side and attempted to kick the steering wheel and "get [the Respondent's] foot on the gas pedal." According to the Respondent in order to prevent her from causing an accident, the Respondent grabbed [REDACTED]'s hand, "pushed the side of her face," and "kicked her foot off...to avoid oncoming cars" as he drove into a parking lot. At that point [REDACTED] got out of the car and slipped, falling to the ground. The Respondent also exited the vehicle and followed [REDACTED] who had already moved about ten or twenty feet away from him. He explained that he did not want to leave her, stating, "She still was my friend and girlfriend and she was so far away from home. I wouldn't leave anybody, even if I didn't know the person."

The Respondent stated, "After I tried to get her back into the car she slipped down my body because it was raining and she started crying. So I went inside my car to get a jacket. She ran away, I got in my car, circled around looking for her. I couldn't find her for ten minutes, eight minutes. When I was able to find her she was hanging onto a pole crying. I got out of my car, gave her the jacket, I said: 'Let's go back into my car.' I got her into the car; she complained her head was hurting." He testified that during this time period she had fallen to the ground at least twice and that he had not pushed her or thrown her to the ground either time. He stated that at one point he was trying to lift her off the ground and she slid back down.

The Respondent testified that he then brought her to a pharmacy and got [REDACTED] for [REDACTED] s head. She complained her head still hurt after taking the medicine, so he took her to [REDACTED] Hospital to be examined. He stated he waited approximately seven hours for her while she was being examined and that they released her that morning.

[REDACTED] told the Respondent that she was given medicine, so they got in his car and returned to his residence. The Respondent said, "We stayed like two days in my place." [REDACTED] also indicated to the Respondent that the hospital staff asked her if he had caused the injuries and told her that she could have him arrested. He told her that they were just doing their job.

The Respondent explained he did not make a report to the Department about the incident because he did not feel it was necessary as he did not know it was a domestic incident. He claimed he did not feel it fell under the criteria of a domestic incident because he and [REDACTED] were not married or related, nor did they have a child or live together. The Respondent did not have any police contact during the incident and they did not interview him while he was waiting for [REDACTED] in the hospital. He only learned that he should have reported the incident during his Official Department Interview, when he was informed that he must notify the Department regarding any verbal or physical altercation, no matter how trivial. The Respondent did not consider the incident to be a physical altercation, as he stated, "I was just trying to protect myself as well as my car and my life and I then tried to get her help at a hospital."

The Respondent investigated incidents of domestic violence when he worked in the 70 Detective Squad. The squad has a specific category for what constitutes domestic violence, and the Respondent later learned that the Department classified domestic violence differently than the squad. He said that the Department would consider an incident like one that occurred in August 2005 a domestic violence incident while his squad would not.

After the August 2005 incident, the relationship between the Respondent and [REDACTED] calmed down," although the Respondent still did not want to continue the relationship. However, the Respondent continued to see [REDACTED] "three, four times a week." The Respondent again indicated that he wanted to break off the relationship, and [REDACTED] had the same reaction—she accused him of seeing other women, and stated, "You can't do this to me, you're all I got." The Respondent could not say why he refused to make a clean break at that time, and added that [REDACTED] would always stop by his house uninvited and call him 20 or 30 times demanding to know his location.

According to the Respondent there was another incident involving the police that occurred between the Respondent and [REDACTED] which took place on April 7, 2006. The incident involved parking. The Respondent explained that he lives in an apartment complex and there are assigned parking spaces for all of the residents. The Respondent and [REDACTED] returned "from a meeting," and [REDACTED] was upset. The Respondent told her that he would take her home and continue their discussion later. They stopped by his residence to get her bags. Upon his arrival the Respondent noticed vehicles parked in his assigned parking spaces. He called 911 from outside of his car in the parking lot in order to have the cars towed.

The Respondent stated that [REDACTED] thought he was dialing the police "because she was intox. She said let me talk to them. I gave her the phone and she walked away. Then I continued to talk to the 911 operator." When she walked away he interpreted her action as a refusal to speak. [REDACTED] did not take the phone from the Respondent, nor did she make any attempt to speak on the phone, although she continued to speak loudly after walking away.

The Respondent informed the 911 operator about the parking situation, but "she was more interested in what was going on in the background." He informed her that it was a television set and asked her to send the police, assuming that once the police were on scene they could ascertain whether or not there was a problem. The Respondent confirmed that the 911 operator asked to speak to [REDACTED] and stated that at that point [REDACTED] walked away. The police responded to the scene and found [REDACTED] and the Respondent in the parking lot. (See DX 6 for the Respondent's 911 call.)

When the police arrived they separated [REDACTED] and the Respondent. The Respondent identified himself as a police officer and pointed out that the cars were illegally parked in his assigned spaces. The officer informed him he needed to call the "agency" to have the cars towed. After speaking to the Respondent for approximately ten or fifteen minutes the officer went to [REDACTED] and asked her if she would like to accompany them. [REDACTED] informed them she would rather stay with the Respondent, at which time she picked up her bags from the Respondent's residence and he took her back home. The Respondent did not report this incident to the Department because he did not "see any reason to call the Department about a parking violation in [REDACTED] County."

The Respondent testified that he had a verbal dispute with [REDACTED] on that day regarding his attempts to break off the relationship. He did not know, at that point, that he was required to report verbal disputes to the Department, as it was prior to his Official Department Interview when he was informed that he was required to report verbal disputes.

The Respondent maintained his relationship with [REDACTED] through December 2006. Between April and December, the Respondent stated, "[The relationship] was

basically just coming to an end, I did everything I could to try to get her help. It was just time to leave." The Respondent stated that he took steps to get [REDACTED] to quit drinking alcohol between April and December, including talking to her family members, taking [REDACTED] to church, and checking her house for hidden bottles of alcohol. Despite his efforts, [REDACTED] continued to drink in the Respondent's presence during this time period.

According to the Respondent, [REDACTED] was intoxicated again with the Respondent present on December 2, 2006. He had completed a 4:00 p.m. to 1:00 a.m. shift starting on December 1. At approximately 1:30 a.m. on December 2, [REDACTED] called the Respondent about 20 times, asking where he was. The Respondent testified that he was in the precinct sleeping in preparation for his tour the next day, but [REDACTED] thought he was with another woman. [REDACTED] called other members of the squad in an attempt to locate the Respondent, and eventually got in contact with him. She told him that she wanted to see him immediately, and so he went to her home on [REDACTED]

When the Respondent got out of his car, [REDACTED] approached him. He stated that he could see she was drunk, and he turned around and tried to leave. As he was leaving, [REDACTED] grabbed the Respondent on the sidewalk, ripping his shirt and punching him three times in the back of his head. The Respondent attempted to get back in his car, but [REDACTED] attempted to punch him again. He evaded the punch and [REDACTED] hit the car, at which point the Respondent decided to take [REDACTED] inside. He grabbed her and told her that he would walk her back inside. He stated he attempted to take her back inside because he would not leave her intoxicated in the street at 2:00 a.m.

The Respondent testified that [REDACTED] would sometimes allow herself to be taken toward her residence, but other times she would not cooperate due to her intoxicated

state. The Respondent said she was not wearing shoes, but had on slippers. He further said she was "uncooperative," saying, "[s]he was trying to scratch me on my face or rip my shirt, something like that." The Respondent continuously indicated to [REDACTED] that he wanted to go inside and talk, but he stated that he planned on leaving as soon as he got her inside. The Respondent would not physically move [REDACTED] while she was being uncooperative, he would just stop until she began complying again.

When the Respondent and [REDACTED] reached the building, he tried to get her up the stairs as he was calling her [REDACTED] for help on [REDACTED]'s cell phone. [REDACTED] was upstairs in her residence, and she had another [REDACTED] that lived down the street. [REDACTED] grabbed the cell phone from the Respondent, and it hit the ground and broke outside of the view of the security cameras. When they reached the door the Respondent used the house phone to call the son for help, and at that time [REDACTED] had used her key to open the front doors to her building.

The Respondent explained he was unable to support [REDACTED] and ring the buzzer for the apartment at the same time, so he got on his phone and tried to call the house phone. At some point the outer door was unlocked, and so the Respondent took [REDACTED] into the vestibule. He then attempted to raise [REDACTED] so she could use the key to the door. The Respondent stated that [REDACTED] attempted to scratch him with the key. He also said, "I'll wait until somebody comes and opens up the door. Sometimes she would get up and fall down and I would move from left to right hoping to get the key to open the door. Eventually the door did open up. As the door opened up she started to fall so I caught her from behind and I walked in to the door." The Respondent explained that during the part of the surveillance video (DX 4) where he enters the building from the

vestibule with [REDACTED] he is attempting to prevent her from falling and they walk up the stairs to her second floor apartment. After gaining access to the building, they walked up the stairs and into her open apartment door. The Respondent saw [REDACTED] and instructed him to throw away the empty alcohol bottles in the apartment and to make coffee for [REDACTED]. The Respondent then set [REDACTED] down on her bed and was informed she had lost a slipper outside. He went to retrieve it, and after finding it on the stairs he returned and [REDACTED] told him she called 911. He then went outside by his car to wait for the responding officers. The Respondent did not observe any injuries to [REDACTED] but did spot blood on the ground. He was not sure if the blood belonged to him from the scratches on his face.

When the officers arrived, the Respondent identified himself as a member of the Department. He stated that his "intox" girlfriend was inside and that they just had an argument. The Respondent testified he contacted [REDACTED] other [REDACTED], informing him that [REDACTED] was intoxicated and he should stay away from her residence. The Respondent stated he could not remember which exact officers responded, but he did not show them his torn clothing. His scratched face was obvious to any observer. The Respondent affirmed his shirt was clearly ripped.

The Respondent then gave his identification card to the sergeant when he arrived and they all went to the 107 Precinct. There the Respondent gave an Official Department Interview and filled out paperwork as a result. He filled out a statement that he showed the officers his cell phone, displaying 20 to 30 calls by [REDACTED]. The officers also took photographs of his injuries and his torn shirt and stated that they would make a report. The Respondent did not remember filling out the narrative portion of a DIR.

The Respondent testified that his relationship with [REDACTED] was over after December 2006, as he "didn't want to be in the relationship any more." When asked if he had any further problems with [REDACTED] the Respondent stated, "After she initiated it. I didn't make any attempts to say I'm your boyfriend or accept her as my girlfriend."

[REDACTED] continued to attempt to contact the Respondent even with the pending investigation, but he advised her that they should not speak with each other. They never got back together the way they had been previously, but continued to speak with one another.

On July 29, 2007, the Respondent heard his home door bell ring between 6:30 and 7:00 a.m. When he opened the door, [REDACTED] walked in and informed him she needed to use his bathroom. After she used the bathroom and the Respondent donned a robe, she informed him she was there to talk to him. When the Respondent asked where she was coming from, she replied, "I just had to work out in the [REDACTED]" The Respondent stated that [REDACTED] was mad. "She tried to conciliate at that time, but it was not going to work." The Respondent said, "It was two and a half, three hours we were talking civilly, I thought I had her; this is over, friendship, we will just be friends. She started out fine." However, when the Respondent went to get something to drink, [REDACTED] saw provocative photographs of the Respondent on a digital camera and asked to learn the identity of the photographer. [REDACTED] accused the Respondent of allowing a woman to take provocative pictures of him, and he replied that he or his cousin took them.

At that point [REDACTED] became irate. The Respondent took the camera to view the pictures, and when he refused to give it back to [REDACTED] she began breaking objects in his apartment. The Respondent eventually gave [REDACTED] the camera and called IAB. IAB

instructed the Respondent to leave the apartment, and the Respondent indicated that he did not like [REDACTED] being in his apartment by herself. During this time period [REDACTED] had also dialed 911. He refused to get off the phone with IAB until the police arrived.

The Respondent pointed out that [REDACTED] had not made a prior arrangement to meet with the Respondent on that morning, and he had not been dating her at any time in the recent past. The Respondent had already completed an Official Department Interview regarding [REDACTED]. He affirmed the conversation lasted two and a half to three hours and stated that it was after the conversation that [REDACTED] began looking at the photographs on the digital camera. The Respondent took the camera to look at the photos and refused to return the camera to [REDACTED] until she began to smash small statuettes the Respondent collected. He handed over the camera in order to prevent damage to anything else and then left the apartment as per the instructions of IAB.

When the [REDACTED] County Police arrived, The Respondent gave the name of the responding officer to IAB and then got off the phone. He then received a call from his duty captain, who asked to speak to the [REDACTED] County Police Officers. After speaking with the officers, the duty captain informed the Respondent that they were going to take a report of the complaints but the captain would not personally respond at that time. Upon re-entering his apartment, he discovered it was in "shambles," with "artifacts" knocked to the ground. He stated that the destruction happened as he was still fighting with [REDACTED] over the camera, and he did not believe [REDACTED] had further damaged anything during the time period when the Respondent was waiting outside for the police to arrive.

The Respondent never went to the [REDACTED] County Precinct. In addition, he was informed that the [REDACTED] County Officers decided to take a cross complaint report

because after they were on the scene for approximately 30 to 45 minutes, [REDACTED] claimed the Respondent threatened her with a barbell. This point was the first instance the Respondent had heard anything regarding an alleged threat to [REDACTED] with a barbell. After escorting [REDACTED] out to take her complaint, the Respondent gave his complaint inside the apartment and received a receipt. To his understanding, [REDACTED] County took two complaints, one with the Respondent as the complainant for criminal mischief done to the objects in his house and one with [REDACTED] as the complainant for harassment.

The Respondent indicated he did not want the officers to arrest [REDACTED]. [REDACTED] made her allegations against the Respondent after the officers told him and Johnson that a complaint would be filed against [REDACTED] for criminal mischief but before they began actually filling out the paperwork. The Respondent indicated that [REDACTED] was not intoxicated on July 29, 2007. This incident became part of the disciplinary case against the Respondent. He was called back to the Department Advocate's office to amend the charges to include the alleged threat with a barbell and was interviewed about the incident by the Chief of Detectives Investigations Unit.

After the [REDACTED] County Police left the Respondent's apartment, [REDACTED] claimed the camera belonged to her and refused to leave without it. The Respondent agreed to let her have the camera if she would leave. Approximately a week after the incident [REDACTED] called the Respondent and apologized, informing him she would let him have the camera. The Respondent stated she had already "blown up" all the pictures in the camera.

The Respondent testified that he talked to [REDACTED] after these incidents, saying, "She called, that's fine. But there was no way we were boyfriend and girlfriend anymore."

Most of the calls were: 'How are you doing, fine. How are you doing, fine.' Couple of minutes on a call."

The Respondent testified that an incident occurred involving [REDACTED] with regard to a New York Liberty basketball game after July 29, 2007. The Respondent left town to attend a family reunion and had a cousin watch his house for him. During the trip the Respondent received a call from his cousin explaining that he just received a phone call coming from the Respondent's house. The Respondent asked his cousin to check on his house, and when the Respondent came back from his trip he discovered some papers were missing including his tickets to a New York Liberty game at Madison Square Garden (MSG). The Respondent reported the tickets stolen and acquired new ones from the box office.

The Respondent did not know who had been in his apartment, but specified that [REDACTED] had keys to his apartment. He added that he had the locks changed after the tickets went missing.

The Respondent went to the game at MSG with two of his cousins and a friend of his cousins. When they got to the game [REDACTED] was there waiting for him. The Respondent informed [REDACTED] she cannot go into the game, and [REDACTED] replied that the Respondent invited her. The Respondent then told her that he made the offer when they were still dating and he had since rescinded the invite due to the relationship ending. The Respondent gave a ticket to his cousin and [REDACTED] unsuccessfully attempted to snatch it away. However, when the Respondent gave a ticket to his other cousin, the other cousin believed it was a joke and gave the ticket to [REDACTED]. After giving another ticket to the same cousin and to the cousin's friend, the Respondent went to the Midtown South

Precinct to make a report. When the responding sergeant arrived after approximately an hour he told the Respondent that the incident can only be documented since [REDACTED] was given the ticket. The Respondent's statement was taken, as he had previously learned that any sort of incident had to be reported and documented.

The Respondent left the precinct and went to MSG. Due to the fact that he was a regular at games, security let him enter without a ticket. As he arrived at his seats, people cheered and clapped for him. [REDACTED] had left the arena by that time, but left copies of the provocative photographs of the Respondent on his four seats, which caused the other spectators to cheer upon his arrival. She also included the Respondent's name, email, address, and other personal information on the photographs. [REDACTED] sent a copy of the photographs to the Respondent's mother and sisters along with other individuals.

On July 29, 2007, the Respondent had a conversation with [REDACTED] where she told him that she had been speaking with the "Department of Investigations" but was waiting to speak further with them until the Respondent decided if he wanted to stay in a relationship with her or not. The Respondent replied, "I'm not going to stay with you, so just tell them the truth." [REDACTED] also stated that Sarubbi kept calling her numerous times over the span of a year, but she kept putting it off until the Respondent made a decision about their relationship.

The Respondent testified that [REDACTED] asked him what she should say. He described the conversation with [REDACTED] stating, "She wanted to get back together. I said: 'We're not getting back together.' She said: 'I can get you in a lot of trouble.' I said: 'Just tell the truth.'" The Respondent never told [REDACTED] specifically what the truth was, and stated that they should not discuss the matter in the first place. The Respondent

never asked [REDACTED] to lie for him, nor did he indicate that she should tell Sarubbi she had been intoxicated. The Respondent also indicated that [REDACTED] stated she would talk to Sarubbi because Sarubbi kept calling her and [REDACTED] thought Sarubbi was "a joke." The Respondent never asked [REDACTED] to change what she had previously said to Sarubbi, and he did not want to say anything at all about the case to [REDACTED].

The Respondent has not had face-to-face contact with [REDACTED] since the New York Liberty game, although he stated that they had contacted one another on the telephone and through text messages. The Respondent also stated that the content of the text messages was relevant to the case and that he had given them to IAB. He testified that some of the text messages carried implications that she could make the case disappear if he would get back together with her. He claimed that he had approximately ten such messages in his phone at the time of the trial. The text messages were sent over the period of a year and the Respondent provided some of these text messages to the investigation. [REDACTED] has continued to attempt to contact the Respondent up to the present day.

The Respondent stated that he did not believe the incident that occurred between August 1 and August 31, 2005 qualified as a physical altercation. He also indicated that police were not involved in the incident. He admitted that he was neglectful in contacting the Department about a police incident, offering that he did not know that he needed to report the incident with [REDACTED] at the time. The Respondent also testified that he was involved in a verbal dispute on April 7, 2006, and that the police responded to the incident. He specified that he called the police due to a parking incident and so did not feel the incident merited informing the Department, especially since his verbal argument

with [REDACTED] was very brief and resolved quickly. The Respondent also testified he did not believe he was the aggressor on December 2, 2006, the date the surveillance video was taken. He stated that he was attempting to help [REDACTED] and that he sustained injuries. He characterized [REDACTED] as the aggressor in that incident.

The Respondent admitted that he essentially lied to a 911 operator on April 7, 2006, in stating that the noise in the background was a television when she requested to speak to [REDACTED]. He added that he felt she would break the telephone. He said he decided to wait for the police to arrive at which point they could determine whether or not there was a problem. He also said that on July 29, 2007, he had a verbal argument with [REDACTED] but never pushed her, nor did he threaten to strike her with a barbell. He never attempted to convince [REDACTED] to change or minimize the allegations against him regarding the investigation.

On cross-examination, the Respondent acknowledged that [REDACTED] on December 2, 2006, called repeatedly that evening and early morning, approximately 20 times. The Respondent answered his phone every time and spoke with [REDACTED] on the phone, and each call lasted between five and ten seconds. He agreed both parties spoke during the calls, and stated that [REDACTED] never left him a phone message that evening.

The Respondent affirmed that during these calls the primary topic involved [REDACTED]'s accusations of him being unfaithful, and that [REDACTED] was "very angry" during the calls. They had been dating for approximately a year and a half to two years, and the Respondent had been to [REDACTED]'s apartment before, although he would not characterize their relationship as serious. The Respondent agreed he was not engaged to [REDACTED] and that he saw her on average, three to four times a week. The Respondent also agreed he

co-signed for the apartment in which the December 2, 2006 incident took place, although he did not consider co-signing for an apartment a big commitment because the other people she had asked refused to co-sign for her and the Respondent knew [REDACTED] needed a place to stay. He initially refused her, but agreed that “[i]t was important enough and she was important enough to [him] to put a financial stake to the relationship.”

When the Respondent first arrived at [REDACTED]’s apartment on December 2, 2006, [REDACTED] was sitting at the top of the stairs that lead to the street. The Respondent described the distance between the sidewalk and the front door as 50 or 60 feet. [REDACTED] saw the Respondent drive by and recognized his car, and so she descended the stairs and approached as the Respondent found a place to park. The Respondent’s parking spot was approximately 50 feet from the stairs. The Respondent affirmed that [REDACTED] walked the 50 feet from the stairs to his car, and that they had an encounter when she reached it, although the car is not visible on the video. The Respondent acknowledged that it was at this point [REDACTED] “attacked” him.

Describing the incident, the Respondent explained that he got out of his car and saw [REDACTED] approach him. He indicated he did not see any injuries or bruises on [REDACTED] at this point, but specified that “[s]he was wobbling.” The Respondent stated she did not have any alcohol bottles on her, but he could smell alcohol on her breath. He agreed it was apparent to him that [REDACTED] was intoxicated. He admitted she did not fall down, trip, or stumble, but added that she “waddled.”

The Respondent agreed he had previous experiences with [REDACTED] being intoxicated and that these experiences had been extremely negative. He denied that he could have gotten in his car and fled the scene when he saw [REDACTED] approaching, stating

that she prevented him from doing so. He also repeatedly denied being able to determine that [REDACTED] was intoxicated from their talks on the phone even though they had been dating for well over a year, citing the short amount of time each call lasted. However, the Respondent affirmed he could tell [REDACTED] was intoxicated as soon as he saw her on the street. The Respondent added that [REDACTED] was only three feet away from him when he exited his vehicle, and her physical assault on him prevented him from driving away. The Respondent affirmed he was in his car as [REDACTED] stumbled down the street towards him. When asked if anything stopped him from driving away, he responded, "I couldn't tell if she was drunk...Even if she was drunk at that point in time I couldn't leave her drunk in the middle of the street." The Respondent explained he could not tell [REDACTED] was intoxicated as she walked the 50 feet from the stairs to his car because he was busy parking the car, thus preventing him from watching [REDACTED] the entire time.

The Respondent agreed that [REDACTED] lives on the second floor of her building on [REDACTED] and that there are two doors one must pass through to enter the building. The Respondent described [REDACTED]'s problem with alcohol as a "heavy drinking problem," adding that he has seen more severe problems than hers. The Respondent agreed that he attempted to get Johnson to seek aid for her problem, asking her to go to Alcoholics Anonymous meetings, to go to church, and to speak with her family about her problem. The Respondent denied speaking to anybody else about [REDACTED]'s drinking problem, explaining that everybody in her family knows but "it wasn't talked about." The Respondent does not have any documentation other than "[REDACTED] herself" that he attempted to reach out to an alcoholics support group on her behalf.

The Respondent acknowledged that [REDACTED] has never been arrested for any drinking related offenses, nor has she been fired from her job for drinking. He would not characterize [REDACTED] as "fall down drunk" the night of December 2, 2006.

The Respondent agreed he gave several sworn statements with regard to the incidents that occurred between him and [REDACTED] and that he was honest and truthful in each of those statements. He agreed that his recollection of the incidents was better during those interviews because they occurred closer in time to the incidents. He recalled giving an interview on January 22, 2007, to the Chief of Detectives, and remembered describing an interaction with [REDACTED] in the interview. The Assistant Department Advocate read an excerpt, stating that the Respondent said: "I'm trying to help her up from the ground, she was intox. (She couldn't walk on her own?) No, sir."

The Respondent, however, still refused to characterize [REDACTED] as "fall down drunk" the night of the incident, stating, "Sometimes she would fall and be able to walk, sometimes she would cooperate, she was walking" on that day. The Respondent agreed that he did not see [REDACTED] fall as she walked the 50 feet to his car, nor did he see her fall and break her head open. The Respondent acknowledged that he told the investigators that [REDACTED] was unable to return to her apartment without his assistance, explaining that he felt it was dangerous for anybody to be out in the street drunk by themselves.

The Respondent recalled the portion of the surveillance video (DX 4) when he stood behind [REDACTED] as they walked toward the front of the building. He agreed [REDACTED]'s legs were moving at that time, denying that they were "flopping around on the ground, dragging, or anything like that." He stated that her head was moving slightly

from side-to-side, and stated that, "Sometimes she would be limp, her body weight would get heavy, sometimes she would cooperate and walk on her own."

The Respondent acknowledged that he recalled the portion of the surveillance video where [REDACTED] stood next to the wall by the front door. The Respondent disputed the fact that [REDACTED] fell to the ground just prior to this point, explaining, "That is where she slumped, because at that doorway there's a pole, she tried to grab the pole and slumped down at the time I was pressing the button to try to open the door."

The Respondent did not recall a portion of the tape where [REDACTED] stood in front of the door and had a conversation with the Respondent but he remembered helping her into the vestibule. The Respondent agreed that at some point he came through a door while in contact with [REDACTED], and afterwards the Respondent released [REDACTED] and she was there by herself. He said that [REDACTED] was falling down inside the vestibule of the building and that he only tried to hold her up one time. The Respondent affirmed that this attempt to hold [REDACTED] up was the movement seen on the surveillance video behind the door of the vestibule. He added that [REDACTED] had the key to the inner door, but when he tried to take the key to unlock the door [REDACTED] attempted to cut his hand. The Respondent asked [REDACTED] to stay away until the door was opened, and she eventually opened the door with her key. The Respondent explained that as [REDACTED] opened the door with the key she began to "slump down, and I grabbed her from behind and the door opened and then we walked up the stairs." He acknowledged that he was holding her from behind "with a bear hug" as he went through the door.

The Respondent acknowledged that he released [REDACTED] once they reached the lobby. When asked if this action was visible on the tape, the Respondent answered that

they went upstairs because [REDACTED] had her hand on the railing and was walking on her own. She told the Respondent she had lost her slipper, and the Respondent was not sure where it was. As he went to look for it in the vestibule, [REDACTED] fell down between the first and second floor, and the Respondent went to help her up the second flight of stairs. He did not exit the building at this time, merely searched the vestibule for the lost slipper. He denied ever going outside to search for [REDACTED]'s slipper.

The Respondent agreed he helped [REDACTED] into her apartment, reiterating he then called for her [REDACTED] and instructed him to make coffee and remove the bottles of alcohol lying around the apartment. He stated he was "tired of looking at the alcohol" and wanted the [REDACTED] to get rid of all the alcohol in the house. The Respondent described the bottles as a type of Trinidadian beer and stated that at least three empty bottles were present. He explained that when he entered the apartment [REDACTED]'s [REDACTED] walked from the bedroom toward the front door. He stated the [REDACTED] was awake and came after the Respondent called his name. The Respondent then walked into [REDACTED]'s bedroom and placed her on the bed.

The Assistant Department Advocate read an excerpt from the Respondent's Official Department Interview from December 2, 2006, where the Respondent stated that he woke the sleeping [REDACTED] up in his bed and instructed him to put his mother in bed. The Respondent did not recall those answers, nor did he recall not mentioning the fact that he told the [REDACTED] to clean up the empty beer bottles. The Respondent agreed that the first time he mentioned instructing the [REDACTED] to clean up the beer bottles was in court that day, and that he had never mentioned the instruction before in any of the times he met with members of IAB.

The Respondent agreed he let go of [REDACTED] in the lobby and she walked up the stairs on her own, grabbing the handrail and mentioning her lost slipper to the Respondent. The Respondent later explained she grabbed him after entering the building asking about her slipper, and when he went to look for it she began ascending the stairs.

The Respondent acknowledged that he could have left after placing [REDACTED] in her bed, but he went to look for the slipper again, and when he returned to the apartment [REDACTED] told him she had called 911. The Respondent acknowledged that there was no danger to [REDACTED] once she was in her bed and that he could have left without looking for the slipper, as her [REDACTED] could have retrieved it. He further admitted that even though [REDACTED] had attacked him prior to searching for the slipper he did not attempt to call the police or drive away. The Respondent denied being present in the apartment when [REDACTED] dialed 911, and he did not know that 911 had been dialed until he returned to the apartment after searching for the slipper.

When [REDACTED] initially approached the Respondent in his car, he agreed he knew she was intoxicated and that she was violent as well. He denied knowing that the right thing to do was to leave at that point, explaining she was his girlfriend and he determined that being in the street while intoxicated was not safe, even if it was legal. The Respondent admitted he then made the decision to put his hands on [REDACTED] and take her into her apartment, although he specified, "Sometimes she was cooperative and wanted to go. She said she wanted to get to the bed. Sometimes she did not want to go. But that is being intoxicated. That is what it is."

The Respondent explained that [REDACTED] changed her mind rapidly and repeatedly regarding whether or not she wanted to go inside her apartment. He agreed that he had

never mentioned that [REDACTED] made the statement "I don't want to go to my bed" prior to the day of that trial. The Respondent denied physically forcing [REDACTED] to go inside during the times where she indicated to him she did not want to go inside, stating, "When she was not cooperative I stopped until she was cooperative...I held her and stopped." He specified that the only time he took action was when he helped [REDACTED] up the stairs, which required more force due to her body weight. The Respondent denied physically restraining [REDACTED] against her will at any point.

Using the Official Department Interview for January 22, 2007, the Respondent explained that when he indicated during the interview that [REDACTED] was holding onto a railing and resisting he meant that she was resisting falling to the ground. The Respondent did not recall having been asked what [REDACTED] tried to do with the railing during his Official Department Interview, although he agreed that a statement he made, "At that point in time, no, she was not trying to stop me," indicated that at some point [REDACTED] was attempting to stop him. When asked during the interview, "At those points in time when she was trying to stop you, she was resisting you taking her into the apartment, correct?" the Respondent replied, "What I meant was she wouldn't give me the key to open the door."

The Respondent denied ever grabbing [REDACTED] by the neck and also denied ever throwing her to the ground. He agreed that the times [REDACTED] is on the ground during the video resulted from her falling, stating that he saw her slump at least five times. The Respondent explained that he only saw her hit the pavement once in front of the door.

Regarding his Official Department Interview from December 2, The Respondent recalled making the statement, "I grabbed her and I said, 'Let me just take you inside,

you're drunk.' I was trying to grab her and to bring her back inside. She kept screaming she doesn't want to go." The Respondent indicated that there were times during the struggle where [REDACTED] verbally indicated she did not wish to enter the apartment, and also times where [REDACTED] physically resisted entering the apartment. The Respondent admitted that despite her resistance he took it upon himself to physically force her to go inside. He explained: "She verbally said she didn't want to go. Five seconds later she said she would want to go."

The Respondent denied that she tried to take out her cell phone and dial 911 during this struggle, although he agreed that a cell phone was broken because he tried to take it out of [REDACTED]'s hand. The Respondent added that [REDACTED] had the phone in her hand the entire time because she had been calling him earlier. He also added that [REDACTED] hit him with the cell phone.

The Respondent, after being referred to his December 2, 2006 interview, recalled that [REDACTED] hit him with her hand, but added that her cell phone was in her hand. The Respondent admitted he had never mentioned in any of the previous interviews that [REDACTED] struck him with her cell phone. The Respondent explained he took her cell phone away outside, and did not call 911 despite the fact that [REDACTED] assaulted him. The Respondent did not call his squad or the Operations Unit either, but indicated that he attempted to contact [REDACTED] without success. He explained that he did not attempt to contact the [REDACTED] who lived in the apartment, but rather [REDACTED]'s other [REDACTED] who lived a block away.

The Respondent could not recall if [REDACTED] was crying during the incident outside, nor did he recall her crying on the 911 tape. (DX 1) The Respondent also did not

recall hearing his own voice on the 911 tape indicating [REDACTED] was drunk. The Respondent explained he was present when [REDACTED] told him that she dialed 911, but he could not be sure if the operator was still on the line.

The Respondent acknowledged that he suffered some scratches from [REDACTED] but denied going to the hospital for medical treatment. He explained that it took approximately 15 to 20 minutes from the time [REDACTED] attacked him at his car until he got her inside the apartment. The Respondent stated that the first time he saw [REDACTED] was when he came from his bedroom as the Respondent called his name after the Respondent helped [REDACTED] up the stairs.

The Respondent acknowledged that in August 2005 he was involved in a domestic incident and during that incident there was a physical altercation between him and [REDACTED]. The Respondent reiterated that during that incident "I took her [REDACTED]'s hand and pushed it against her, on the side of her face" to move her away from the steering wheel while he was driving the car. He acknowledged that they were next to each other and that nothing was between them. He stated that he was not "looking at her" because he "was still trying to drive the car." While he did not see an injury to [REDACTED]'s face he admitted that his pushing her hand against her face "could have" caused an injury. The Respondent acknowledged that when he later saw her after exiting the car he did observe a "little bruise" on the side of her face as a result of shoving [REDACTED] s hand against her face.

The Respondent was shown photographs (DX 3A-3H) and agreed he had seen them before. The Respondent admitted that the injury caused by pushing [REDACTED]'s hand against her face was depicted in one of the photographs, DX 3B. The Respondent

pointed to a circular bruise on [REDACTED]'s right chin or jaw line as well as a black and blue mark on the right corner of [REDACTED]'s upper lip as depicted in DX 3B. The Respondent acknowledged that pushing [REDACTED]'s hand against her face was the only time he could have caused her any injury, "besides holding her wrists against her so she wouldn't continue to grab the steering wheel." He also stated that he "tried to hold her feet because she was trying to kick me."

The Respondent further acknowledged that he was driving the car and that [REDACTED] was a passenger in the car, seated to his right. The Respondent described the motion that caused the injury to [REDACTED] stating, "Her body was turned toward me trying to get the steering wheel and I took her hand and just went like that trying to keep one hand on the steering wheel and drive." [The Respondent had his left arm extended outward as if holding the steering wheel and pulled his right arm across his body and stretched it out parallel to the forearm.]

The Respondent further acknowledged that the injuries to [REDACTED] depicted in the photographs occurred while he was present in August 2005. When asked if the remainder of the injuries depicted in the photograph were sustained when she fell he replied "Some things happened when she fell down, some things happened when I put the hand like that." The Respondent again reviewed the photograph and stated that "I don't see any injuries when she fell down," adding that "She complained about a headache, those are internal."

The Respondent stated that just prior to being in the car with [REDACTED] in August 2005, they went to dinner and [REDACTED] had "about two glasses of wine." He had been with [REDACTED] for two or three hours prior to the incident in the car and stated that she

appeared intoxicated when he first met her to go to dinner. He did not mention that

[REDACTED] had been drinking prior to their dinner engagement to the other investigators, explaining that none of them had asked.

The Respondent agreed that [REDACTED] did not have any bruises prior to going to dinner, nor did [REDACTED] sustain any injuries during dinner. The Respondent conceded that all of [REDACTED]'s injuries were sustained during their altercation.

After the altercation, the Respondent acknowledged that he took [REDACTED] to the hospital. He agreed that he did not report the incident to the Department at any time despite the fact that [REDACTED] sustained all the injuries depicted in the photographs during the altercation. The Respondent reaffirmed that he did not see any injuries from her falling depicted in the photographs, agreeing that all the injuries seen in the photographs were the result of the Respondent making the previously described motion with his arm. He explained he could "only assume or guess that some of those injuries happened when she fell down, but I didn't see them." He acknowledged that the only injuries he saw that night were the ones on her lip and chin along with the ones she sustained to her wrist. He denied having any knowledge of how [REDACTED] sustained all the other injuries to her face or head.

Referring to the Respondent's Official Department Interview from January 22, 2007, a passage was read where the Respondent was asked by Sergeant Lamberty: "So I'm saying when she got the injury, was that when she jumped out of the car or is it when you got out and you were trying to stop her?" The Respondent replied: "Well, the injury I know of, sir, is when I grabbed her from behind and I put her in the car and slipped

down and hit her head...And hit her head." The Respondent stated that he only had a vague memory of making those statements.

The Respondent did not notice any bleeding after [REDACTED] sustained the injuries, and stated that [REDACTED] "complained about a slight bump on her head." After seeing her injuries, the Respondent took [REDACTED] to a CVS pharmacy, upon her request, to purchase [REDACTED]. He described [REDACTED] as "mildly intoxicated" and indicated that [REDACTED] was not "fall down drunk." While the Respondent agreed that [REDACTED] was not "crazy, wild, out of control drunk," he did describe her as being "crazy and wild angry." After [REDACTED] indicated that she still had a headache after taking the [REDACTED], the Respondent decided to take her to the hospital in order to "have her head checked out just in case." He took her to the emergency room in [REDACTED] Hospital, as it was near [REDACTED]'s home when the decision was made to take her to the hospital.

The Respondent acknowledged that he was driving the whole time, and indicated that there were no further incidents in the car. He never spoke to the doctor, stating that he checked [REDACTED] in and waited in the waiting room as the doctor examined her. He waited at the hospital in the waiting room and stated that it seemed like he was there for five to seven hours.

The Respondent further acknowledged that he had a verbal dispute with [REDACTED] on April 7, 2006. He also acknowledged that on that day he dialed 911 about illegally parked cars, not the verbal dispute with [REDACTED]. The Respondent explained he dialed 911 and not his local precinct because in [REDACTED] County the residents are instructed to dial 911 for anything.

The Respondent admitted that he never reported the verbal dispute he had with [REDACTED] to the Department, and stated that the argument had occurred over dinner and was not ongoing as they returned to the Respondent's house, although [REDACTED] was still upset. The Respondent indicated that he was upset as well, but specified that he was upset over the parking matter and not the argument. He also indicated that their relationship was on the verge of ending at this point, although it did not end until December 2006. The Respondent then testified that the relationship did not continue after April 7, 2006, and that they were just friends at that point.

He stated that April 7, 2006 was not the first time he noticed cars parked in his space, as it had been occurring for over a month. The Respondent denied being home for two hours before calling 911, agreeing that he called right away. The Respondent affirmed that as a member of the service he was obligated to notify the Department if the police respond to an incident, but specified that there must be "criminal activity." The Respondent also added that "if I call the [REDACTED] County Police for parking I'm not obligated to call the New York City Police Department."

He affirmed that [REDACTED] County police came, but denied that they interviewed him about a domestic incident between him and [REDACTED]. The Respondent explained that the responding officers separated him and [REDACTED] because they believed it was a domestic incident, but when they questioned him, he explained that he called about the parked cars. He could not recall the officers asking him anything about a domestic incident.

The Respondent indicated he became aware of the officers questioning [REDACTED] regarding a domestic incident only after she told him. When asked if [REDACTED] told him

what the officers asked her, the Respondent stated, "No." When asked if he was aware they questioned her about a domestic incident, the Respondent stated, "They questioned her, yes." When asked if they definitely spoke with [REDACTED] about the domestic, the Respondent said, "I was very much aware they wanted to talk to her because of the 911 call. I said when the police came, they can assess if there was any problem." The Respondent did not recall ever being asked about a domestic incident, stating that he "might have said we were having an argument but that's about it."

When confronted with his Official Department Interview from January 22, 2007, where the Respondent was quoted as saying "Okay, when the police got there, they—I showed them the cars, they probably thought there was a domestic incident so they separate us, talked to her separately, talked to me separately," the Respondent stated that he did not recall giving that answer.

The Respondent admitted that he made a 911 call and during that call [REDACTED] made statements in the background. He stated that he "heard some statements in the background" but he was "not sure" that he indicated in one of his interviews that Johnson made a statement to the effect "you beat me up and then you called the cops on me." He conceded he "heard something to that effect" when the 911 call was played earlier in the trial. The Respondent admitted that when the 911 operator asked him about the statement she heard in the background he informed her that it was the television, even though "that was not true." He also knew that the 911 operator was a civilian employed by the [REDACTED] County Police Department. The Respondent acknowledged that the 911 operator asked to speak with [REDACTED] and agreed [REDACTED] walked away when he offered her the phone and that [REDACTED]'s actions were the only reason why she did not get on the phone.

When reminded that during his interview on January 22, 2007 he was asked the following question and gave the following answer: "Why didn't you allow her to speak to the 911 operator? Like I said it's embarrassing, I didn't want them to think they were talking to somebody intoxicated," the Respondent indicated that he recalled that portion of the interview, and added, "Yes, I did feel it was still embarrassing, yes."

The Respondent affirmed that the July 29, 2007 incident involved a dispute over a camera at his residence. At that point the Respondent had been on modified duty without firearms for "quite some time" and the charges and specifications had already been served. The Respondent acknowledged that he knew [REDACTED] was the complainant, and also knew that there was an ongoing investigation of him. [REDACTED] arrived at his house uninvited at approximately 6:00 or 7:00 a.m. while the Respondent was still in bed. He stated that it had "been a long time" since the Respondent had last seen [REDACTED]. He admitted he saw her between December 2, 2006, and July 29, 2007, although could not remember the exact time or place. He did specify that the nature of their encounter was merely to check on each other's welfare.

The Respondent explained that Johnson came because "[s]he wanted to try to get back together, to make our relationship work together." He agreed that he told investigators she came because she wanted to use the bathroom, adding that "when she came in the first thing she did was use the bathroom." The Respondent also added that [REDACTED] came in on her own, forcing her way in as soon as he opened the door. The Respondent conceded he did not try to stop her, nor did [REDACTED] attack or coerce the Respondent.

The Respondent acknowledged that he received phone records for July and August 2007 (DX 10) but he did not go over the records "at all." He could not recall if he called [REDACTED] six times on July 27, 2007, nor could he recall if [REDACTED] had called him 15 times between July 27 and July 29, 2007.

The Respondent did not want her to be in his residence on July 29, 2007 but still did not ask her to leave even though she was in his apartment for over two hours. He explained that during those two hours [REDACTED] attempted to convince him to get back together, but the Respondent disagreed and thought they were better off as friends.

The conversation became heated when [REDACTED] began looking through the photographs in the Respondent's camera after she had been there two hours. The Respondent explained he received the camera from [REDACTED] as a Christmas present. He never had a receipt for it, but knew the camera cost more than \$700. [REDACTED] became very upset when she saw the pictures on the camera.

The Respondent agreed he was familiar with the provocative photographs and what they depicted, but disputed the fact that they were taken by his male cousin. He agreed that his cousin took some of the photographs that were in the camera that depict the Respondent in a suit, and added that he took the provocative photographs himself. The Respondent did not know why [REDACTED] became upset after seeing the photos, and added he did not feel that she was upset about the nature of the photographs but rather over who may have taken them. When asked if the Respondent thought it might be fair to say [REDACTED] got upset over who took the photographs considering their nature, the Respondent replied, "Her first explosion to me was, 'Who took these photographs,' not the type of photos."

The Respondent affirmed there was a "struggle" in his apartment over the camera, and stated that he was holding the camera during the altercation. He said he was attempting to ensure that [REDACTED] would not get the camera as well as to see which photos enraged her. As the Respondent held the camera [REDACTED] was wailing at [him] from the back" with her hands, intentionally knocking down his statuettes.

The Respondent acknowledged that he remembered informing the investigator that he handed over the camera "because it wasn't worth it," but added that this occurred after [REDACTED] began struggling and destroying his property. She also tore his shirt in an attempt to take the camera.

The Respondent never told the [REDACTED] County officers about the ripped shirt because they "saw she ripped the shirt." He denied receiving a package from [REDACTED] County about what happened that day as part of discovery for the charges against him, and also denied seeking charges against [REDACTED] for the events of that day. He added he simply wanted her to leave even if it meant giving her the expensive camera.

He knew she had already made three allegations against him, but explained, "At this point in time I felt since I talked to IAB and the duty captain, if she wants to take the camera and leave, take it and leave, and just go on from there. She was gone." The Respondent acknowledged that [REDACTED] returned the camera to him ten days later, calling him at work and instructing him to pick up the camera. He went to meet her again "despite all that happened" without calling IAB, as he wanted the camera back.

The Respondent acknowledged that he had filed a complaint against Johnson for criminal mischief regarding the incident on July 29, 2007 and wanted to provide that complaint to the investigator. He further acknowledged that he previously said he looked

at the complaint every day which was on his dresser, but explained that he meant the receipt the police officer made for him with the "number" on it. He acknowledged he had heard Sarubbi testify that when she redeemed the receipt it was a complaint of harassment against the Respondent. He stated that she was totally incorrect and that he had been told by the [REDACTED] County police officer that he completed a complaint against [REDACTED] for criminal mischief.

The Respondent further explained that he was positive that he filed a complaint for criminal mischief against [REDACTED] explaining that the [REDACTED] County officer indicated they would take a cross-complaint report and then give him a receipt after taking his report. The Respondent indicated he knew that in New York City individuals must sign a complaint when they file it, but cited his unfamiliarity with [REDACTED] County procedures when he denied signing anything during the incident.

The Respondent agreed he had already contacted IAB due to the incident and knew it would come up again in the investigation. He explained that he never went to [REDACTED] County to obtain a copy of the paperwork because he had a receipt "which is usually good enough in New York City." The Respondent stated he did not know the receipt was for another complaint report until Sarubbi testified earlier in the trial. He denied having a copy of the police report with him.

The Respondent agreed he previously testified that Johnson had not mentioned the barbell threat until after the [REDACTED] County officers had been there for 45 minutes. He indicated that he was incredulous when she made the claim, and even the responding police officers did not believe her. The responding officers put "threaten with a

[barbell]" in their report because "[t]hat's their job," although the Respondent did not know they put it in the report.

The Respondent acknowledged he was aware that [REDACTED] called 911 during the incident and that the 911 call had been played previously in the trial. When asked if the Respondent remembered [REDACTED] claiming she had been threatened with a barbell during the call, he indicated that he did not recall that specific 911 call being played during the trial, and was instead referring to the 911 call from her residence.

The Respondent acknowledged that on August 13, 2007, the Respondent spoke to IAB and complained about numerous text messages and phone calls from [REDACTED]. He explained that [REDACTED] sent him text messages stating that she only dialed 911 because she thought he was calling the police as well. He stated that he complained to IAB because Johnson was harassing him via text messages and phone calls. He denied that IAB instructed him to file harassment charges against [REDACTED] specifying, "I believe they said you should file harassment charges against her. I don't think I was instructed to." The Respondent denied filing harassment charges, explaining that the [REDACTED] County police told him to get an order of protection.

The Respondent did not recall phoning [REDACTED] on August 5, 2007, and speaking with her for 12 minutes, nor did he recall phoning [REDACTED] on August 6, 2007, four times. The Respondent also did not recall an 11-minute phone call on August 10, 2007, nor two phone calls lasting nearly an hour on August 11, 2007. The Respondent did not remember phoning [REDACTED] twice on August 12, 2007, the day before he complained to IAB about [REDACTED] harassing him, but explained that on August 13, 2007, he attempted to set up a "control call" in the presence of IAB. He stopped trying upon an IAB

sergeant's questioning of the legality of his attempts, and did not remember the second or third call. The Respondent denied remembering calling [REDACTED] four times on August 15, 2007.

In his October 11, 2007 Official Department Interview the Respondent described the incident at MSG on August 17, 2007 and reaffirmed he wanted nothing whatsoever to do with [REDACTED] at that time. He did not recall phoning [REDACTED] on August 17, 2007.

The Respondent explained that two others had keys to his apartment: [REDACTED] and his cousin. When his cousin called to inform him somebody had called from the house while the Respondent was away, the Respondent agreed he knew it was not his cousin in the house because his cousin just called him. He believed [REDACTED] had entered his residence. The Respondent stated that his credit card statements and phone bills were stolen in addition to his event tickets. The Respondent, however, did not file a complaint about the incident, and explained: "All I did was call MSG with regard to the tickets and I knew it was [REDACTED] so I said all right. Nothing was missing of value." He did not call the police with regard to his house being broken into and burglarized.

The Respondent denied meeting [REDACTED] at the box office at MSG, explaining that [REDACTED] came with him from the train station. He added, "She waited for me to finish work downstairs, I took the train, she followed me to the train station, took the same train I did to MSG and walked with me to the box office." The Respondent affirmed that he occasionally takes the train to work and sometimes he drives his car. The Respondent drove to work that day but chose to take the train to MSG because of the difficulty finding parking. He further explained that "I was going to take my car but [REDACTED] tried to get into my car, I didn't want nothing to do with that. I decided to leave

the car there and take the train." The Respondent then agreed that he was contradicting his earlier statement that [REDACTED] was the reason he decided to take the train into the city,

At the time he went to MSG the Respondent had already been given charges and specifications and had remained on modified duty without firearms for an extended period of time. He stated that [REDACTED] was waiting for him downstairs when he got off work, but he admitted not returning to work in order to get another police officer to remove [REDACTED] from the location. The Respondent also conceded he did not try to contact IAB immediately when [REDACTED] attempted to get into his car, and did not do anything to stop [REDACTED] from accompanying him on the train. He explained that he did not try to restrain her because he did not want physical contact with [REDACTED]. He did not call 911 or IAB, stating, "She wasn't harming me or threatening me." The Respondent initially denied speaking with [REDACTED] on the train, but then admitted, "She might have said a few words, I said: 'Yeah, whatever.'"

The Respondent then went to the box office to get a new set of tickets, and stated that to his knowledge [REDACTED] did not have the original set. He explained that his cousin then gave [REDACTED] a ticket, but the Respondent did not try to stop him. He specified that his cousins were unaware of the situation between the Respondent and [REDACTED].

The Respondent claimed that the relationship between him and [REDACTED] ended around December 2006, and after it was over there was no romantic relationship although they still maintained a friendship. The Respondent and [REDACTED] are not presently in a relationship. The Respondent agreed he stated the relationship was over December 2, 2000 in an Official Department Interview given on January 22, 2007. He could not recall if he had called [REDACTED] at least 36 times on his cell phone between July and August

2007. He stated he would sometimes call her from work, but he was not certain. The Respondent agreed he also used text messages to communicate with [REDACTED]

When asked if he thought maintaining his relationship with [REDACTED] through phone calls was appropriate while the Department was conducting an investigation, the Respondent replied, "I received phone calls from [REDACTED] she said if I don't get back to her she is going to tell the department of investigation anything she wants to, so I better call her back. Sometimes I called her back based on that threat." The Respondent did not mention this fact in any of his Official Department Interviews, although he did notify his attorneys and told IAB outside of his interviews.

The following passage was read from the Respondent's Official Department Interview on January 22, 2007 and stipulated as read accurately:

Q: Are you and [REDACTED] still together?
A: Yes, ma'am.
Q: Is she an alcoholic do you know, does she have drinking problem [sic] because every time you mention her you say she's intoxicated, she is acting a certain way and you're trying to protect her.
A: Yeah, okay. I mean we spend holidays together. We just came back from Vegas together, right. You know, New Years together in Vegas. All right, you're trying to make things work (inaudible,) they had been working until she drinks, and the reason why she drinks is because, you know, she says: "I'm not around."

The Respondent could not recall those questions and answers, but did recall the trip to Las Vegas. They had made the arrangements a year in advance and they shared the expenses. They went shortly after Christmas, "[m]aybe the 27th," in 2006.

On re-direct examination, the Respondent testified he had a receipt for the replacement camera he bought, not the one [REDACTED] gave him. The Respondent added,

[REDACTED] did give me a receipt in case I wanted to make a change, I never physically had the receipt on me."

FINDINGS AND ANALYSIS

The Department's case essentially relies on hearsay statements made by [REDACTED] [REDACTED] statements which were made at various times and under different circumstances. She made 911 calls, was interviewed by three different investigators, signed off on allegations against the Respondent in a domestic incident report and submitted a written withdrawal of a complaint in another matter.

At the beginning of this trial the Assistant Department Advocate (ADA) informed this Court that [REDACTED] refused to come forward and give testimony regarding the various allegations she made against the Respondent. This Court must therefore weigh her out-of-court, unsworn statements, including her withdrawal of her complaint, against the live testimony given by the Respondent.

Hearsay is admissible in this forum but it "must be so substantially reliable and probative that a reasonable inference of the existence of a fact may be culled therefrom." (Ayala v. Ward, 170 A.D.2d 235 (1991)) In Ayala v. Ward, the Court outlined a number of factors that should be considered in determining the probative value and the reliability of hearsay evidence. They are: (1) The identity of the hearsay declarant; (2) the availability of the declarant to testify; (3) the extent of the declarant's personal knowledge of the facts; (4) the independence or bias of the declarant; (5) the detail and range of the hearsay evidence to the agency's case; (6) the degree to which it is

corroborated; (7) the centrality of the hearsay evidence to the agency's case and (8) the magnitude of the administrative burden should the hearsay be excluded.

It is not in dispute that [REDACTED] refused to come forward and testify at this trial because "she feels her life has moved on, she no longer wants to be involved." Her apparent lack of interest, as depicted by the ADA, in and of itself, weighs heavily against the reliability of her hearsay statements.

[REDACTED]'s initial contact with the Department highlights the difficulties with this case. According to Sarubbi, on November 4, 2006, [REDACTED] filed a complaint against the Respondent with IAB regarding harassment in a domestic dispute. Two days later, on November 6, 2006, she filed a "Withdrawal of Complaint" where she voluntarily withdrew her complaint stating that she "was angry and overreacted," adding that she "did not mean to get the police involve[d]" and was "so sorry." (DX 5) While the details of that complaint were not made clear, what is clear to this Court, given her non-appearance at this trial, is that [REDACTED] cannot be relied on to come forward and support the credibility of her allegations, under oath, once they are made.

Specification Nos. 1 and 2

Specification Nos. 1 and 2 allege that on or about and between August 1, 2005 and August 31, 2005, the Respondent engaged in conduct prejudicial to the Department in that he was involved in a physical altercation with [REDACTED] and thereafter after "having been involved in an off-duty police incident" neglected to report the incident as required.

[REDACTED], during a telephone interview with Sarubbi in November 2006, revealed to the Department that she was involved in a physical altercation with the Respondent in

August 2005—over a year after the alleged event. It was then that [REDACTED] told Sarubbi that she got into a verbal argument with the Respondent while she was a passenger in his car as they drove in [REDACTED] County. [REDACTED] told Sarubbi that at one point she exited the car and the Respondent proceeded to push her to the ground, got on top of her and choked her.

Sarubbi also had in her possession the 8 photographs of [REDACTED] depicting bruises to her face. (DX3A-H) [REDACTED] told Sarubbi that the injuries were the result of the physical altercation in August 2005.

[REDACTED] provided Vincent with the 8 photographs on December 2, 2006. [REDACTED] identified herself as the person in the photos and told Vincent that she was in the Respondent's car driving on [REDACTED] and at one point after he called her an immigrant: "That's...when he hit me on my face and I took these pictures I gave you he had twisted my arm." She added that she "took these pictures myself so they're not very clear." She also told Vincent that she did not report the incident because she "thought things would just get better."

During her interview with Hunter-Clark on August 21, 2007, [REDACTED] added additional and more serious facts to her allegations regarding August 2005. She stated that the Respondent took his gun out and told her to get out of the car and when she refused he dragged her out of the car called her a bitch and an immigrant and put the gun to her head. She stated that after it was over the Respondent was "remorseful" and "sorry."

This Court is also mindful of the fact that during the lengthy interview with Hunter-Clark [REDACTED] went from one incident to another without clearly defining the time frame of the incidents she was describing.

The Respondent acknowledged that he was involved in an incident with [REDACTED] in August 2005 and that there was a physical altercation between them. He testified that at that time they had been arguing about [REDACTED]'s alcohol consumption while driving on [REDACTED]

[REDACTED] During the ride she began screaming, accusing him of wanting to see other women. He stated that she struck him in the side and attempted to kick the steering wheel. In order to prevent her from causing an accident he grabbed her hand and pushed the side of her face and pushed her foot away. His purpose was to move her away from the steering wheel while he was driving the car.

[REDACTED] then exited the car and slipped on the wet ground and fell down. Johnson ran away and when he finally found her he brought her back to the car but not before she slipped and fell again. She complained that her head hurt and he took her to a pharmacy and got her [REDACTED]. He then took her to [REDACTED] Hospital for an examination.

The Respondent observed a bruise on her face at the time and admitted that one of the photos that [REDACTED] took of herself depicted a bruise that occurred when he pushed her away in the car. He also stated that the one time he pushed her away was the only time he could have caused her any injury.

[REDACTED] spoke of going to [REDACTED] Hospital during her interviews, but never clearly attributed the visit to the August 2005 incident. At one point she did say that she went to [REDACTED] Hospital during an incident that occurred in April 2006.

This Court finds that [REDACTED]’s hearsay version of what occurred in August 2005, reported long after the incident occurred, is sketchy at best and changed with each version that she told. Without her appearing and testifying to the events under cross examination and scrutiny by this Court, it is very difficult to find her versions of what occurred, credible. The Respondent’s version appears to be plausible and this Court can not find him to be less than credible because it does not have a credible version to compare it to.

The Department has argued that the photographs support their version of the events. The Court, in reviewing these photographs, finds that they cannot be said to clearly support one version of events over the other and are therefore inconclusive on the critical issue of how the injury occurred.

Accordingly, I find the Respondent Not Guilty of Specification No. 1.

While the Respondent has been found not guilty of Specification No. 1, he nevertheless was involved in a physical altercation with [REDACTED] and should have reported the incident to the Department.

The Respondent argues, through his attorney, that since the police were not called he was not obligated to notify the Department. This position simplifies the essence and purpose of Patrol Guide section 212-32.

The Patrol Guide is clearly a guide as to how officers should comport themselves on and off duty. It cannot include or anticipate every situation that may arise in the life of its members. As such, Section 212-32 refers to off duty incidents involving uniformed members of the service. The incidents referred to are “unusual police occurrence” which include “family disputes and other incidents of domestic violence in which the officer is

either a participant or a witness. Section 212-09 further defines "Unusual Occurrence" as: "substantially more than an ordinary occurrence because of its seriousness, peculiarities, sensationalism, vastness, differences, newsworthiness, or potential to affect police-community relations involving interracial/ethnic conflict or community unrest."

The physical altercation that the Respondent and [REDACTED] his [REDACTED] were involved in is clearly substantially more than an ordinary occurrence and it certainly falls within the domain of a domestic incident. Moreover, the nature of their physical altercation undoubtedly falls under the umbrella of a police incident and should have been reported as such. Had the police been called it is likely that they, at the very least, would have been detained for investigative purposes. Therefore, the Department has an interest in being notified and made aware of such an occurrence involving one of its members.

Accordingly, the Respondent is found Guilty of Specification No. 2.

Specification Nos. 3, 4 and 6

The next set of specifications charge that the Respondent on or about April 7, 2006, engaged in conduct prejudicial to the Department in that he was involved in a verbal dispute with [REDACTED] and thereafter "having been involved in an off-duty police incident" neglected to report the incident as required. He is further charged with failing to cooperate with a 911 operator in that while he was speaking to the 911 operator the operator heard [REDACTED] say that the Respondent "beat her up" and when the operator asked to speak to [REDACTED] the Respondent falsely told the operator "That's a TV, don't

worry about it." And when the operator asked to speak to [REDACTED] the Respondent told the operator, "No."

During her interview with Vincent, [REDACTED] stated "...in April [2006] of this year we had another fight again, and he pushed me, we were fighting and he pushed me down. He was grabbing at me and he pushed me down and I hit my head and I was bleeding from my nose..." She stated that she went to the [REDACTED] Hospital at that time.

[REDACTED] also told Sarubbi that in April 2006, she was visiting the Respondent when they became involved in a dispute and he struck her. During the Respondent's 911 call to the [REDACTED] County Police, [REDACTED] can be heard saying, "You beat me up and now you call the cops on me." During her interview with Hunter-Clark, [REDACTED] added to her story when she appears to make reference to the April 2006 incident (while not specifically referring to a date) where she stated that they got into an argument and he pushed her to the floor and put his hand over her mouth and she "felt like I passed out for a couple of minutes." She then, without referring to another time frame, talks about being in the Respondent's car and having an argument while they drove along [REDACTED] Avenue. She stated that at one point she is trying to get away from him and he pushed her and she fell down and injured her head and nose. It was then that she stated that the Respondent took her to [REDACTED] Hospital.

[REDACTED]'s hearsay statements make it difficult for this Court to establish and credit her version as to what actually happened to her on April 7, 2006. Her version, as previously noted changed from one interview to another where she added facts that she previously did not mention. To add to this confusion and uncertainty, the Department

chose not to support her claims of physical abuse and charge the Respondent with that type of misconduct.

The Respondent's version, without credible facts to the contrary, can be viewed as plausible where he states that he had a verbal dispute with [REDACTED] regarding his attempts to break off their relationship. He admitted that he never reported the verbal dispute to the Department because he did not believe he had to, and he never admitted to striking her at that time.

The Respondent called the [REDACTED] County Police and explained that he did so because someone was parked in his personal parking space in his housing complex. During his conversation with the 911 operator, however, a female voice [REDACTED] is heard saying something to the effect that he beat her up and now "Your gonna call the cops on me." The 911 operator can also be heard asking the Respondent to repeat what the female is saying and then asks to speak to the female. The Respondent then told the 911 operator, "No that's a TV don't worry about it" and refused her request to speak to the female (DX 6).

According to Sarubbi, when the [REDACTED] County Police responded they were intent on investigating a domestic disturbance. They separated [REDACTED] and the Respondent and questioned them but apparently [REDACTED] did not tell the officers that she was physically assaulted by the Respondent because at the end of their preliminary investigation neither the Respondent nor [REDACTED] were taken to the precinct for further investigation.

The Respondent admitted that he lied to the 911 operator in stating that the noise in the background was the TV when she requested to speak to [REDACTED]. He excused his

behavior by adding that Johnson had been drinking that day and when he offered to give her the phone she walked away. He then decided to wait for the police to arrive and let them decide whether there was a problem.

The Department charged the Respondent with engaging in a verbal dispute with [REDACTED] This Court, however, is not of the opinion that each and every time a member has a verbal dispute or argument with their spouse, significant other or friend that the member is violating the Patrol Guide and engaging in conduct prejudicial to the Department. Nor should it be required that such arguments require that the Department be notified. Members should be allowed to have disagreements with another person even in a passionate manner, without having the police respond to their homes.

Here, the Respondent was charged with having an argument with [REDACTED] He gave a plausible version that the argument was about breaking off their relationship. [REDACTED] through her hearsay statements, in contrast, told a story of the Respondent getting physical with her. The Department did not charge the Respondent with physically harming her so this Court does not credit her accusations as fact of what occurred and concludes that only a non-chargeable argument took place.

Accordingly, the Respondent is found Not Guilty of Specification No. 3.

While this Court finds that a mere verbal dispute should not be deemed misconduct under the Patrol Guide, with no requirement to notify this Department, the Respondent's conduct during the call he made to the [REDACTED] County 911 operator is another matter entirely.

The 911 operator's main purpose was to evaluate emergencies as they are relayed to her through the 911 calls. When she heard the female's voice talking about being

beaten she made an effort to speak to her to determine what might be happening to her on the other end of the call. The Respondent, as a police officer, knows the importance of a 911 call and also knows the importance of not withholding information from the 911 operator. This Court finds that the Respondent, by intentionally misleading and holding back information was blatantly dishonest with the 911 operator. There was no excuse for this dishonesty because even if ██████████ was intoxicated and lying about him hitting her he, as a police officer, had a duty to cooperate and be truthful to the operator. In addition he maintained the lie even when the operator told the Respondent that she was making a record of what the female said and that officers would be arriving. Moreover, his excuse that he tried to give the phone to ██████████ is not believable, but even if true; it does not excuse his blatant lie to the operator about the voice being the TV.

Therefore, this Court finds that the Respondent's act of misleading the 911 operator caused the police to respond to the location expecting to be confronted with a domestic disturbance which then elevated the situation not only to an unusual occurrence but also to an off-duty police incident that required the Respondent to notify the Department as to what occurred. The Respondent's misleading and lying to the 911 operator was certainly conduct that can, at the very least, be described as conduct prejudicial to the good order, efficiency or discipline of the Department.

Accordingly, the Respondent is found Guilty as charged of Specification Nos. 4 and 6.

Specification No. 5

The Respondent is charged that on December 2, 2006, he engaged in conduct

prejudicial to the Department in that he was involved in a physical altercation with Johnson.

On December 2, 2006, [REDACTED] appearing upset, made a 911 call reporting an incident involving the Respondent at her home at [REDACTED]. When she was asked to state the emergency, she told the operator: "I have a cop here, who is supposed to be my friend and he, he this is not the first time it's the third time he have beating me (sic) up when I try to call he break up my phone. He's he's supposed to be my boyfriend. He's no...He said he and you know what he want to say I'm drunk right I'm (inaudible)." Later in the call she states "Please I'm bleeding on my foot....He threw me down two times outside....On the outside he pushed me down two times."(DX 1)

Also on December 2, 2006, [REDACTED] was interviewed by Vincent at 7:30 a.m. regarding the incident at her home on that date.¹³ During the course of that interview, Vincent noted "a faint smell of alcohol" on [REDACTED]'s breath. [REDACTED] had told Vincent that she had a few drinks 12 hours earlier at 7 p.m. the previous evening.¹⁴ Johnson did not appear intoxicated to Vincent. Vincent had no knowledge of any independent witnesses to the incident nor did she uncover any other objective evidence to the incident.

[REDACTED] told Vincent that they had been arguing the prior evening about the Respondent having relationships with other girlfriends. The Respondent went to [REDACTED] s home and she met him in the street. She stated that as she walked up to him he grabbed her and asked her what her problem was. She then said that the Respondent "grabbed me on my throat and...he pushed me down on the floor..." She stated that

¹³ As previously mentioned [REDACTED] also told of other incidents involving the Respondent during this interview.

¹⁴ The incident she was reporting occurred at approximately 5:00 a.m.

when she tried to call 911 he broke her phone. She further told Vincent that as they were walking back to her apartment he grabbed her again, told her that she was drunk and said "let me take you inside." According to [REDACTED] he then "picked me up and put me on his shoulder" and she told him to leave her. She then pushed him and hit him and he grabbed her throat and she "grabbed at him and I scratch him on his face. And he have some scratches on his face." She stated that after the Respondent picked her up and put her on his shoulder he then threw her again to the ground where she claims to have cut her foot. She then got up and walked towards her building and the Respondent told her "don't fall again I'm going to just make sure you get inside safely." She said that he then grabbed her again and pushed her to the floor. He also, according to [REDACTED], kept hitting her on her head and on her arm. Once in the apartment he told her son "your mother is drunk she doesn't know what she's doing...take her and put her in the bed to lie down." At that point she called 911.

This Court received into evidence the video surveillance of the Respondent and [REDACTED]

[REDACTED] The first part shows them walking down the path leading to her building. The grainy images show the Respondent and [REDACTED] walking in tandem down a path and it appears that he was holding her from behind guiding her towards the building. Another camera with shadowy black and white images shows them at the front door for a period of time before they entered the building. As they approach the door he appears to let her go and she appears to fall. The Respondent then appears to be speaking on a cell phone while [REDACTED] stands apart from him. After they entered the building their images can be seen on a different camera, inside the building. That camera gives the view of an interior hallway with a door at the end. The Respondent and [REDACTED] can be seen through the

glass of that door and the view is very limited. It is not possible to determine exactly what was taking place but the two of them do linger in that area for a period of time. They then come through the door. The Respondent again appears to be assisting her through a doorway leading to the hallway. He is then seen walking behind her with his hands in his pockets. They then apparently enter her apartment.

Nowhere in the video can the Respondent be seen picking [REDACTED] up and throwing her to the ground. Nor does it show him continuously hitting her on her head. In fact, at times it appears that he is helping her get to her home, an image that contradicts the allegations that he beat her and threw her to the ground.

Sarubbi also conducted an investigation regarding the December 2 incident. She stated that she reviewed reports prepared by responding officers and that one of the officers indicated that [REDACTED] appeared intoxicated. Sarubbi admitted that she had no way of knowing if [REDACTED] was intoxicated even though the Respondent indicated that she was intoxicated on more than one occasion. Sarubbi acknowledged that she had two "diametrically opposed accounts of the events (between [REDACTED] and the Respondent) that took place" and no objective evidence to determine the truth.

[REDACTED] was also interviewed by Hunter-Clark. She told Hunter-Clark that the Respondent grabbed her and started hitting her. Here she added details to her story by claiming that he was "dragging me by my hair, pulling me up the street, and I screaming..." She claimed that a taxi driver saw them and that she tried to run away and tried to call 911 but the Respondent broke the phone. No such conduct can be seen on the video which starts with the two of them in the street, nor is there anything on the video to suggest that such conduct had occurred prior to the first camera picking them up.

The Respondent testified that [REDACTED] was intoxicated on December 2, 2006. He stated that [REDACTED] had called him about 20 times starting at 1:30 a.m. He stated that while he was at work at the precinct [REDACTED] thought he was with another woman and she even called other members of his squad to try to locate him.

According to the Respondent when he arrived at her address she was approaching his car. She appeared drunk to him because he could smell alcohol on her breath and "she was wobbling." When he decided to leave she grabbed him, ripping his shirt and punched him three times in the back of his head. When he attempted to get into his car she punched him again. The Respondent stated that this physical altercation happened by his car and out of view of the building's surveillance video.

The Respondent decided to take [REDACTED] to her apartment because he did not want to leave her on the street in her intoxicated condition. He stated that she was wearing slippers on her feet and when he attempted to take her toward her residence sometimes she would cooperate and other times she would not and she "was trying to scratch me on my face or rip my shirt..." He stated that he did not physically move her when she did not cooperate and would stop until she began to move towards her building again.

He stated that at one point when she was by the door to the building she did not fall to the ground, rather "that is where she slumped, because at the doorway there's a pole, she tries to grab the pole and slumped down at the time I was pressing the button to try to open the door." Once in the hall he stated that she was falling down inside the vestibule. When he tried to take [REDACTED]'s key to open the door she tried to cut his hand. He finally got her to her apartment where her son was and [REDACTED] was helped to bed.

The Respondent denied restraining [REDACTED] against her will and further denied ever grabbing her by the neck and throwing her to the ground. He stated that she went to the ground as a result of her falling or "slumping" to the ground. He only saw her hit the pavement once in front of the door.

[REDACTED]'s version further suffers through the testimony of the responding officers, Carolan and Muhlenbruck. Carolan stated that [REDACTED] seemed like she was intoxicated in that "She was...slurring her words a little..." While he later qualified this statement by stating that "It wasn't that she was stumbling intoxicated or anything like that...[and] She looked like she had drank during the day and was basically coming down from earlier in the day," he also made it clear that [REDACTED] was, to some degree, under the influence of alcohol which supports the Respondent's version.

Muhlenbruck also smelled alcohol on [REDACTED]'s breath but drew the conclusion that she was not intoxicated. While she told him that the Respondent grabbed her neck and threw her to the ground, he could not find any injuries to her neck. He did see an injury to her foot and when he offered to get her medical treatment she refused. He also saw a scratch on the Respondent's cheek supporting his claim that [REDACTED] scratched him.

While Muhlenbruck thought the Respondent was the primary aggressor, he admitted that his investigation coupled with the Duty Captain, Eriksen's additional investigation, led to the determination that each party was potentially the subject and the victim of domestic violence. No arrests were made and two complaints and two domestic incident reports were filed reflecting a cross-complaint incident. [REDACTED] signed a [REDACTED]

Domestic Incident Report which basically stated that the Respondent grabbed her by the throat and she scratched his face and he threw her to the ground where she cut her foot.

The Department has argued that the 911 call made by [REDACTED] provides strong evidence that her version of events is credible. Unfortunately [REDACTED] has a history of making and then retracting complaints. Without her presence in Court to affirm that version of events, under oath and with cross-examination to test it, the telephone call by itself is insufficient to establish the facts as claimed by the Department. Moreover the video provides no clear evidence of a struggle. If the Respondent was indeed assaulting [REDACTED] some clear evidence of it should have been seen by the various cameras that surreptitiously recorded their movements that morning.

Based on the foregoing this Court was not presented with sufficient evidence that credibly supports one side over the other and thus the Department has not met its burden. Accordingly, the Respondent is found Not Guilty of Specification No. 5.

Specification Nos. 7, 8 and 9

The Respondent is charged that on July 29, 2007, he engaged in conduct prejudicial to the Department in that he was involved in a "verbal dispute and/or physical altercation" with [REDACTED] and said dispute resulted in the Respondent pushing [REDACTED]. He is further charged with conduct prejudicial to the Department in that he threatened to strike [REDACTED] with a dumbbell and did attempt to convince [REDACTED] "to change and/or minimize allegations against the Respondent regarding an ongoing investigation."

On July 29, 2007, [REDACTED] called 911 and told the operator that her boyfriend (Respondent) "just grabbed me and throw me against the TV." When the operator asked

if he had any weapons [REDACTED] stated "No, he just pick up his barbell that he had on the floor here and he tell me he'll smash my face with it."

On August 21, 2007, [REDACTED] was interviewed by Hunter-Clark. She told Hunter-Clark that the Respondent had called her prior to July 29 and wanted her to speak to his lawyer, who was going to call her, and say that she was drunk on December 2, 2006 and she told him "no problem." She stated that she agreed to do it because she "really, really, really did like this guy." Given that [REDACTED] has maintained that she was not drunk, she is now in essence admitting that she was willing to lie in a legal proceeding to protect the Respondent.

[REDACTED] had a change of heart, however, after she arrived at the Respondent's home. She stated that after she arrived they sat and talked in the living room until approximately 12:00 or 1:00 p.m. At first she told Hunter-Clark that while they were talking he went into the bedroom and was acting "suspicious about something." She asked him what was he hiding and he said nothing. She then asked about the camera that she gave him and in a very short time she discovered pictures of him naked in the camera and accused him of being involved with another woman. When the Respondent told her that his cousin took the pictures, she did not believe him, even after speaking to the cousin. She then attempted to take the camera back from the Respondent because she was angry that some other woman had to have taken the pictures. She stated that he then swung and knocked the shelf off of his entertainment center containing figurines. She then quoted him as saying "oh my God [REDACTED] look at what you did..."

[REDACTED] further told Hunter-Clark that she put the camera in her bag and decided to leave. As she was leaving the Respondent's home she stated that he took out a barbell

and said "if you walk out of here this is coming behind you..." [REDACTED] stated that she decided not to leave and then the Respondent "shoved" her and he walked out the door. "He kind of opened the door and kind of ...pushed me in the corner and he opened the door and he went out." She then heard him talking on the phone and thought he was calling 911. It was at this point that she called 911. She added that he took her cell phone and hid it, so she took his cell phone from the bedroom and called 911.

It is important to note that [REDACTED]'s credibility suffers from the lack of consistency in her story. During her 911 call she told the operator that the Respondent grabbed her and threw her into the TV and that he was going to smash her face with the barbell. During her interview there was no mention of the TV and no mention of being grabbed and thrown or the threat of being smashed in the face. She specifically said that she was "shoved" and "kind of pushed me in the corner." It is also hard to believe that the Respondent would break the figurines that he collected.

According to [REDACTED] when the police arrived the Respondent was outside waiting for them and told them that [REDACTED] broke "stuff" in his apartment. When the officer spoke to [REDACTED] she told them her side of what happen and was asked if she wanted the Respondent arrested and she said yes. The officer then informed her that if one was arrested then both would be arrested because the Respondent said that she broke things in his place. [REDACTED] then left with the Respondent's cousin who had arrived at the apartment. No arrests were made.

[REDACTED] denied that she went to the Respondent's apartment in the hope of renewing her relationship with the Respondent. She just went there to discuss his case.

She also denied becoming upset and throwing his things around the apartment and stated that the reason they had a "scuffle" was because she wanted her camera back.

The Respondent's testimony, in contrast, is more plausible than [REDACTED]s. He testified that [REDACTED] came to his house to talk about getting back together but he concluded that it was not going to work. After two to three hours of talking the Respondent left the room and when he returned [REDACTED] had looked at his camera and found provocative photographs of the Respondent. She then accused him of allowing another woman to take the pictures.

The Respondent stated that he took the camera to view the pictures and when he refused to return it to her she began breaking small statuettes that he had collected in the apartment. He eventually gave her the camera and called IAB where he was instructed to leave the apartment which he did. [REDACTED] then called 911 and the Respondent remained on the phone with IAB until the police arrived.

When the [REDACTED] County police arrived he gave the name of the responding officer to IAB. When he returned to the apartment he discovered that it was in "shambles" with "artifacts" knocked to the floor. This was the result of the struggle he and [REDACTED] had over the camera. He stated that [REDACTED] made her allegations only after the police told her that they would file a complaint against her for criminal mischief.

After the police left he gave [REDACTED] the camera. He admitted to having a verbal argument with [REDACTED] but denied pushing her and also denied threatening her with the barbell. He also stated that he never attempted to convince [REDACTED] to change her story regarding the allegations against him.

At the time of this incident the Respondent had been on modified duty and had already been served with charges on the previous matters involving Johnson. It is therefore difficult for this Court to credit [REDACTED]'s hearsay statement where she stated that he broke his own statuettes that he spent time collecting and then push her and threaten her with a barbell while he was leaving his apartment to call IAB. [REDACTED] did not know he was calling IAB; she thought he was calling the police on her. By her own admission, that is when she called 911. When the police responded they were responding to her 911 call. He in turn remained on the phone with IAB and gave them the responding officer's name.

The Department claims in its written closing argument that telephone records support the notion that the Respondent invited [REDACTED] over to discuss her testimony. The Department asserts that, "the Respondent called Ms. [REDACTED] no less than six times on July 27." Unfortunately the Department neglects to mention that Ms. [REDACTED] called the Respondent eighteen (18) times that day (DX 10). Thus, phone records are at least consistent with the Respondent's claim that she wanted to reconcile as they are with her claim that he tried to get her to withdraw her complaint.

Further, the Department in its closing argument claims that [REDACTED] arrived at the Respondent's home at 11:30 a.m. In coming to that conclusion the Department takes the Respondent's statement that [REDACTED] had been at his house for two to three hours and counts back from the 911 phone call made at 1:39 p.m. (that would put the arrival time at somewhere between 10:30 and 11:30). The Advocate also notes an inconsistency in the Respondent's statements about when [REDACTED] arrived, in that at another point in the Respondent's testimony he said she arrived at six or seven o'clock in the morning.

To be sure, the Respondent is inconsistent but the Department's analysis ignores [REDACTED] statement on this very subject. In an interview on August 21, 2007, less than a month later, [REDACTED] said: "I got there maybe 9 o'clock, maybe after 9." If the Department wants this Court to rely on [REDACTED]'s statements regarding the nature of the incident, it is not clear why the Department simply disregards her statement regarding the time she arrived. Perhaps, it is because [REDACTED] goes on to say: "So maybe around so between 9:00 and I would say 12:00, 1:00 o'clock or something," leaving some confusion as to what she meant (DX 9A).

The Department also argues that two phone calls on July 29 confirm that [REDACTED] arrived at 11:30 a.m. Both of these phone calls are from [REDACTED] to the Respondent. One is at 9:32 a.m. lasting 34 seconds and the other is at 11:56 a.m. lasting 13 seconds.

How these calls confirm that [REDACTED] arrived at 11:30 a.m. is not clear, particularly since one occurred well after that purported arrival time and only lasted 13 seconds. Further, there is no indication that either of these calls resulted in an actual conversation.

There is no testimony from [REDACTED] explaining the phone calls nor is there testimony from [REDACTED] clearly stating when she claims to have come to the Respondent's home on July 29, 2007. Additionally, the ambiguity about when she arrived or even what she was referring to underscores that the interviews of [REDACTED] were intended to obtain her statement uncritically. The interview statements thus lack the kind of testing of reliability that occurs when someone is cross-examined under oath.

[REDACTED]'s hearsay statement about her being asked to change her story about being drunk also suffers from this lack of critical analysis. She is simply not challenged

on this. For instance, [REDACTED] said that the Respondent called her and asked her to come over and talk to him so she could tell his lawyer that she was drunk. That would involve a visit to his lawyer's office not to his home on a Sunday morning. There is simply no questioning of her about the lack of logic in what she said.

Based on all of the above, it is clear that [REDACTED]'s hearsay statements do not form a sufficiently reliable basis on which to make a finding against the Respondent. In addition she has shown that she had motive, through her jealousy of other women in his life, to lie about the Respondent. [REDACTED]'s explanation for why she went to the Respondent's home on July 29, 2007 arose from her willingness to change her story about a prior incident involving the Respondent. Moreover, there was no independent corroborating evidence to support the Department's version of what occurred.

Accordingly, I find the Respondent Not Guilty of Specification Nos. 7, 8 and 9.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

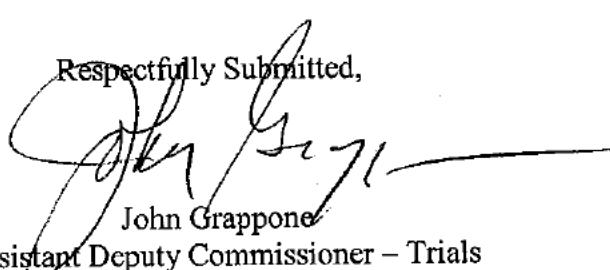
The Respondent was appointed to the Department on July 15, 1989. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of neglecting to report his off-duty incidents with Johnson on two occasions and Guilty of conduct prejudicial to the Department where he failed to cooperate and lied to a 911 operator when he was

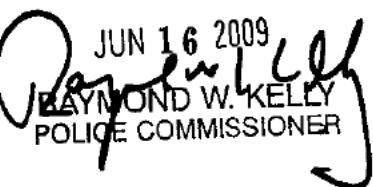
questioned as to what [REDACTED] was saying in the background of his 911 call and where he refused the operator's request to speak to [REDACTED]

The Respondent, as a member of the Department, was required to notify the Department and make it aware of the incidents that occurred between him and [REDACTED] More importantly, he lied to a 911 operator and undoubtedly set in motion the response of the [REDACTED] County Police who believed that they were responding to a possible serious domestic dispute. Consequently, the Respondent as a trained Detective failed to maintain the integrity and trust the Department places in him to act responsibly during these types of situations.

Based on the foregoing and the Respondent's service record, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. I further recommend that the Respondent forfeit 30 vacation days.

Respectfully Submitted,

John Grappone
Assistant Deputy Commissioner – Trials

APPROVED

JUN 16 2009

RAYMOND W. KELLY
POLICE COMMISSIONER